

NEBRASKA PUBLIC SERVICE COMMISSION

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



December 31, 2020

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December 31, 2020

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

Dear Mr. O'Donnell:

This is the 5th year the Public Service Commission has provided a report to the Legislature per LB 629 (2015) which details information gathered from Transportation Network Companies (TNC) and taxi cabs. The 2020 report once again strives to address concerns by Legislators of unfair competition due to the respective regulatory schemes of TNC's and taxis.

This report charts changes since 2015 in taxis in service, taxi drivers, taxi rides, NDHHS trips, and taxi rides vs TNC rides broken down by Omaha, Lincoln, the rest of Nebraska, and totals for the state. Of particular note are two extreme events which may skew the data which was collected from July 1, 2019 through June 30, 2020; namely the flooding of 2019 and the onset of the pandemic in 2020.

Finally, the Transportation Department has two recommendations for the Legislature regarding insurance concerns and surge pricing during states of emergency.

We hope this report is a useful tool as the Legislature works on transportation issues in the coming Biennium.

Sincerely,

Mary Ridder
Chair

Michael C. Hybl, Executive Director

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Introduction

1. 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.ⁱ 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.ⁱⁱ 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 2020 TNC Annual Report are as follows:

- *Fees*: The Commission determined that the 2020 per-vehicle fee for TNCs should remain at \$80 per vehicle.
- *Impact of TNCs and Other Considerations*. The second half of 2019 showed continued TNC ridership increases, with some taxicab ridership increases in Lincoln and Greater Nebraska. However, the impacts of the COVID-19 global pandemic on TNC and taxicab ridership in the last reporting quarter from March to May 2020 were immediate and severe, disrupting any trends that may have been occurring in the market.

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 1, 2020, the balance of the Fund was approximately \$ 76,101.67.

On September 29, 2020, the Commission held a public hearing and determined that the per-vehicle fee for 2020 should be set at \$80.00 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 three lienholder notification forms between December 3, 2019 and December 2, 2020.

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.

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 2019-2020, the Commission did not receive any specific tips that led to informal investigations by Commission staff. However, Transportation Investigators engage in monitoring activities proactively.

Additional Information

In the spring of 2019, Nebraska was one of several states that experienced major flooding. Nebraska suffered over \$1 billion in flood damage, including damage to roads, businesses and homes. Lives were lost, and a state of emergency declaration was issued for most of the the state's 93 counties.ⁱⁱⁱ All transportation was affected, including TNCs and taxicab carriers. As noted in the Commission's 2019 Report, Governor Pete Ricketts issued Executive Order 19-09 which waived the requirement that TNCs not engage in dynamic pricing during any state of emergency declared by the Governor.^{iv}

With the onset of the COVID-19 pandemic in the spring of 2020, all facets of the transportation industry have been severely impacted. The carriers adhered to the Directed Health Measures implemented across the state, taking extra precautions to ensure driver and passenger safety. Taxicab carriers also had the additional impact of losing ridership through contracts as other entities such as Nebraska Department of Health and Human Services or school districts suspended services. This year's Report shows the initial impacts, and we would expect the 2021 Report to further illustrate the pandemic's impacts.

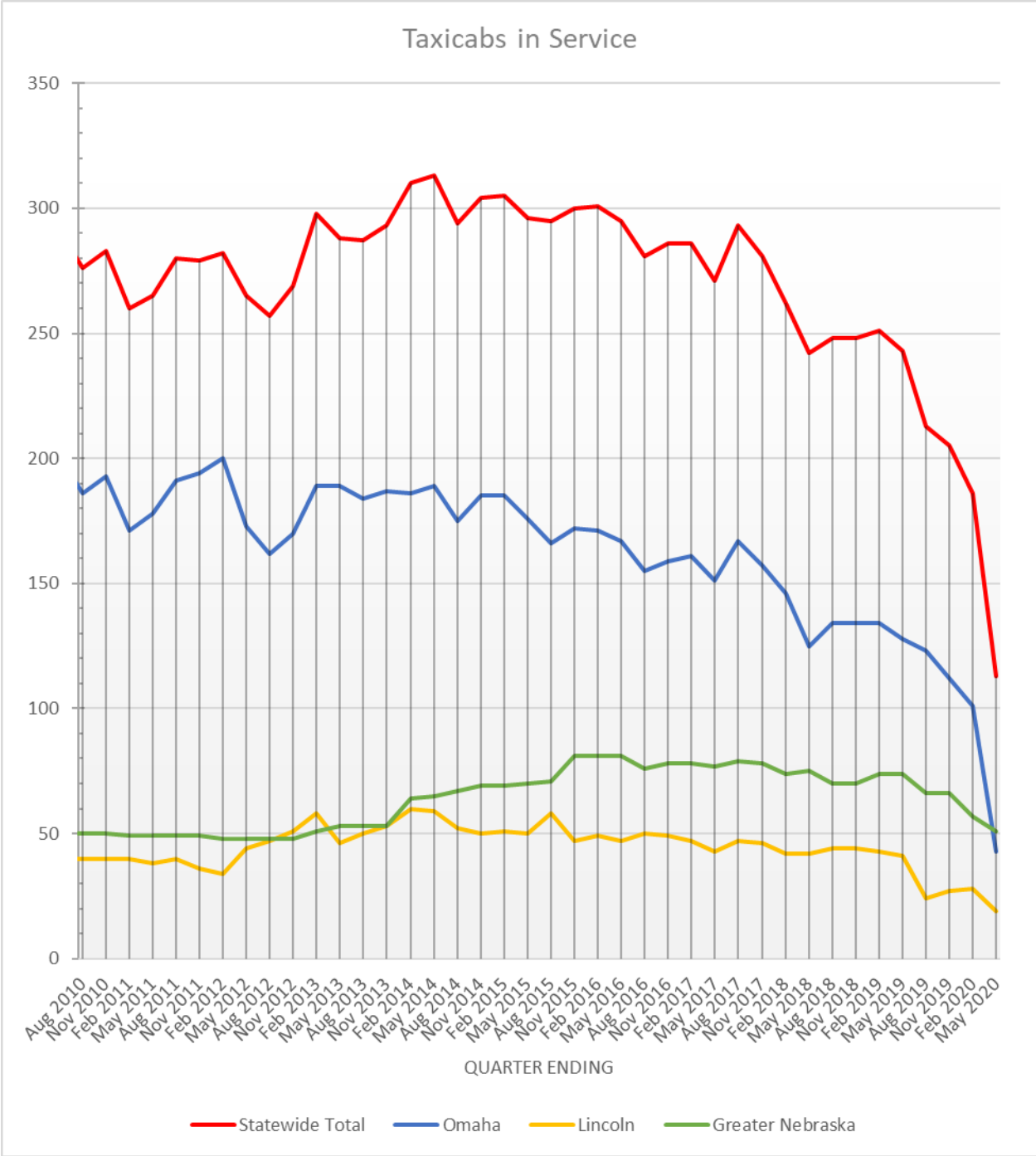
Taxicab Carriers

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 23 taxicab carriers that hold a Certificate of Public Convenience and Necessity to provide taxi services in the State of Nebraska. In 2020, two taxicab companies suspended operations and the Commission revoked one taxicab authority.

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.

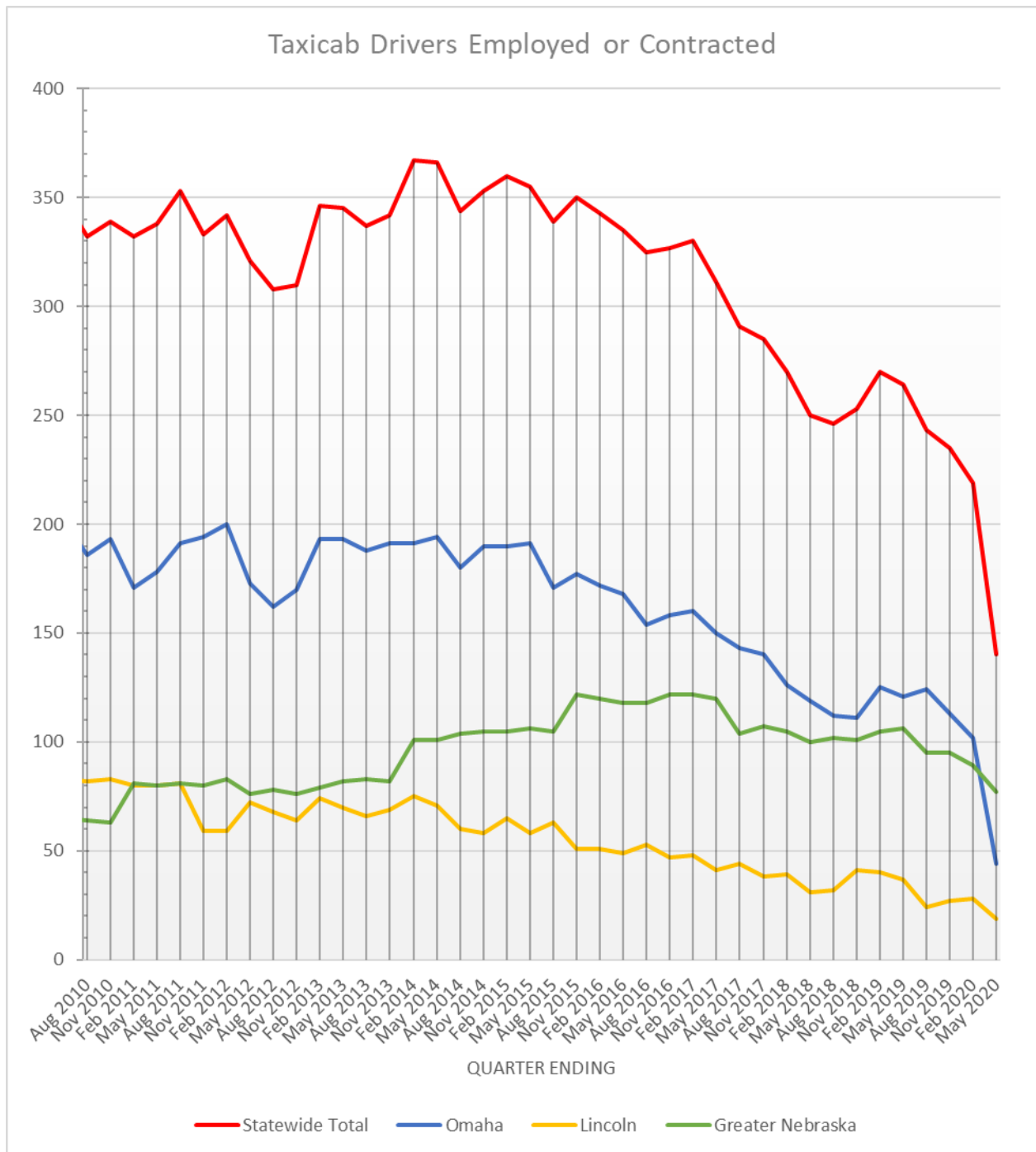
Each taxicab carrier annually reports to the Commission the number of taxicabs in service, number of drivers employed or contracted, and the number of rides completed. Each taxicab carrier self-reports its numbers in quarterly increments. The following chart show the number of taxicabs in service since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



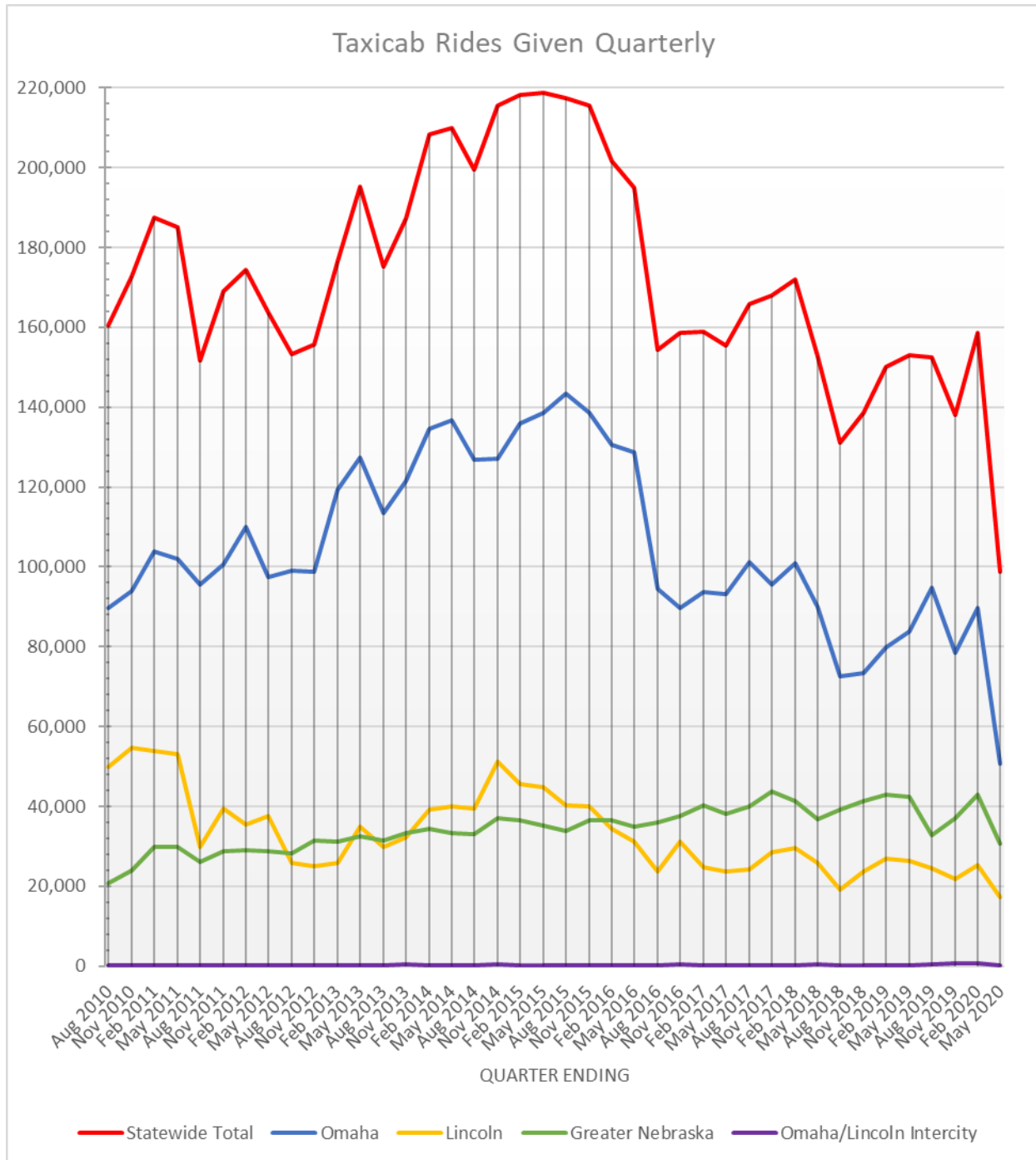
Statewide, the number of taxicab vehicles in service were in decline again since last year's Report, with Lincoln again showing a decline in vehicles from May to August 2019 before beginning to slightly increase. This could be due to the ownership transition that occurred for one Lincoln taxicab company during the summer and fall of 2019. The decline in vehicles for Greater Nebraska for the same time period may be the effect of two taxicab companies not providing services. However, the number of vehicles in

service statewide plummeted in February and March 2020, most likely showing the initial impacts of the pandemic.

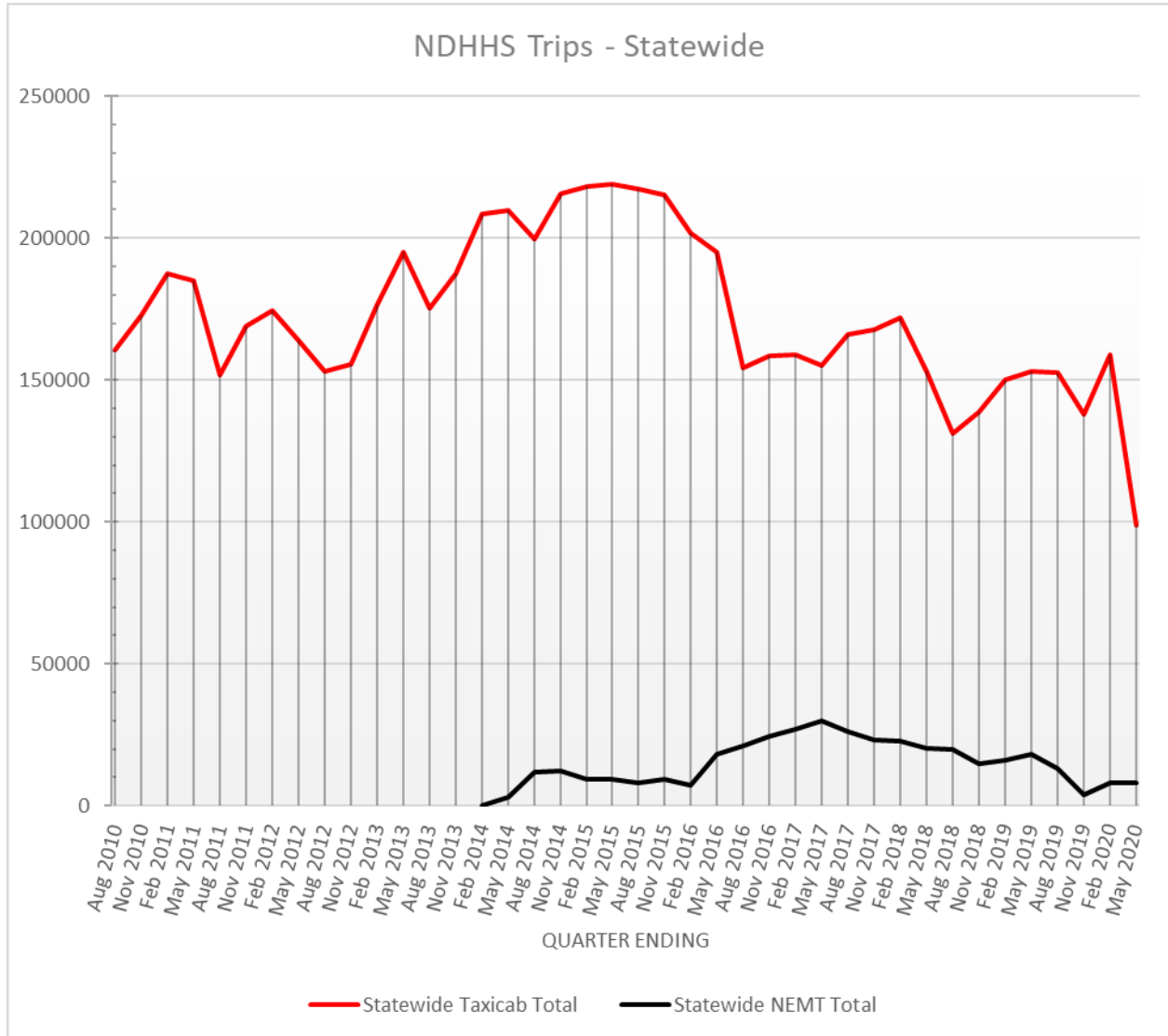
The next chart shows the number of drivers either employed or contracted with a certificated taxicab carrier since May 2010. Again, we note the reported decline of drivers since May 2019. Omaha shows the sharpest decline in drivers beginning February 2020:



As common carriers, taxicab carriers provide transportation to the general public. Taxicab carriers may also provide transportation services as part of contracts with various public and private entities. The following chart shows the total rides completed for taxicab companies since May 2010. Greater Nebraska shows a dramatic decrease in rides from May 2019 until recovering those numbers by February 2020. Omaha again shows dramatic shifts in ridership since the last Report:



About 14 of the 23 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:

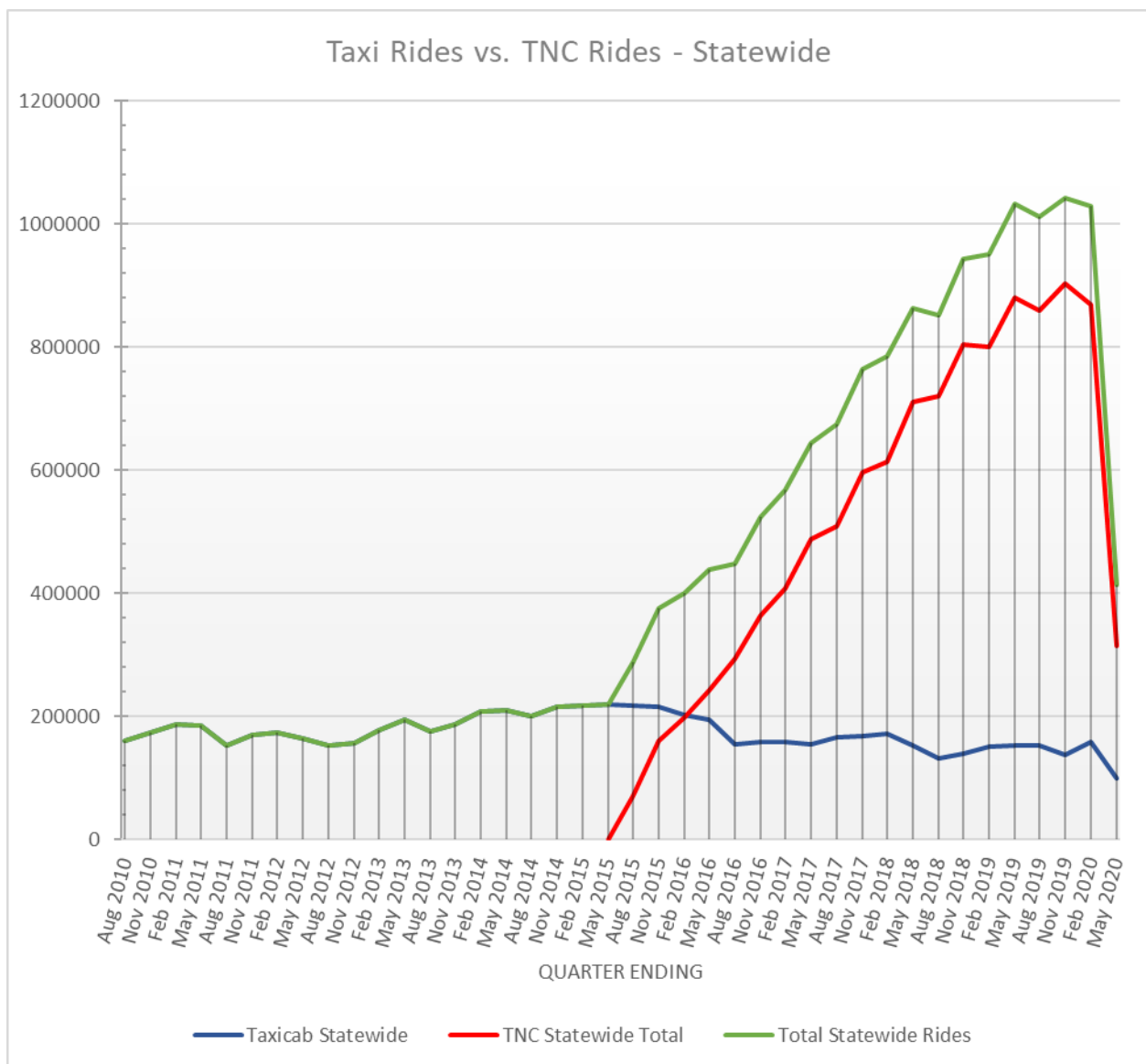


Neb. Rev. Stat. § 75-342 provides that TNCs may apply with the Commission for HHS Designation to provide NEMT services for NDHHS. Any TNC application for HHS Designation would be reviewed using the same standards that the Commission would utilize to review HHS Designation applications for other passenger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

TNC Impact on Taxicab Industry in Nebraska

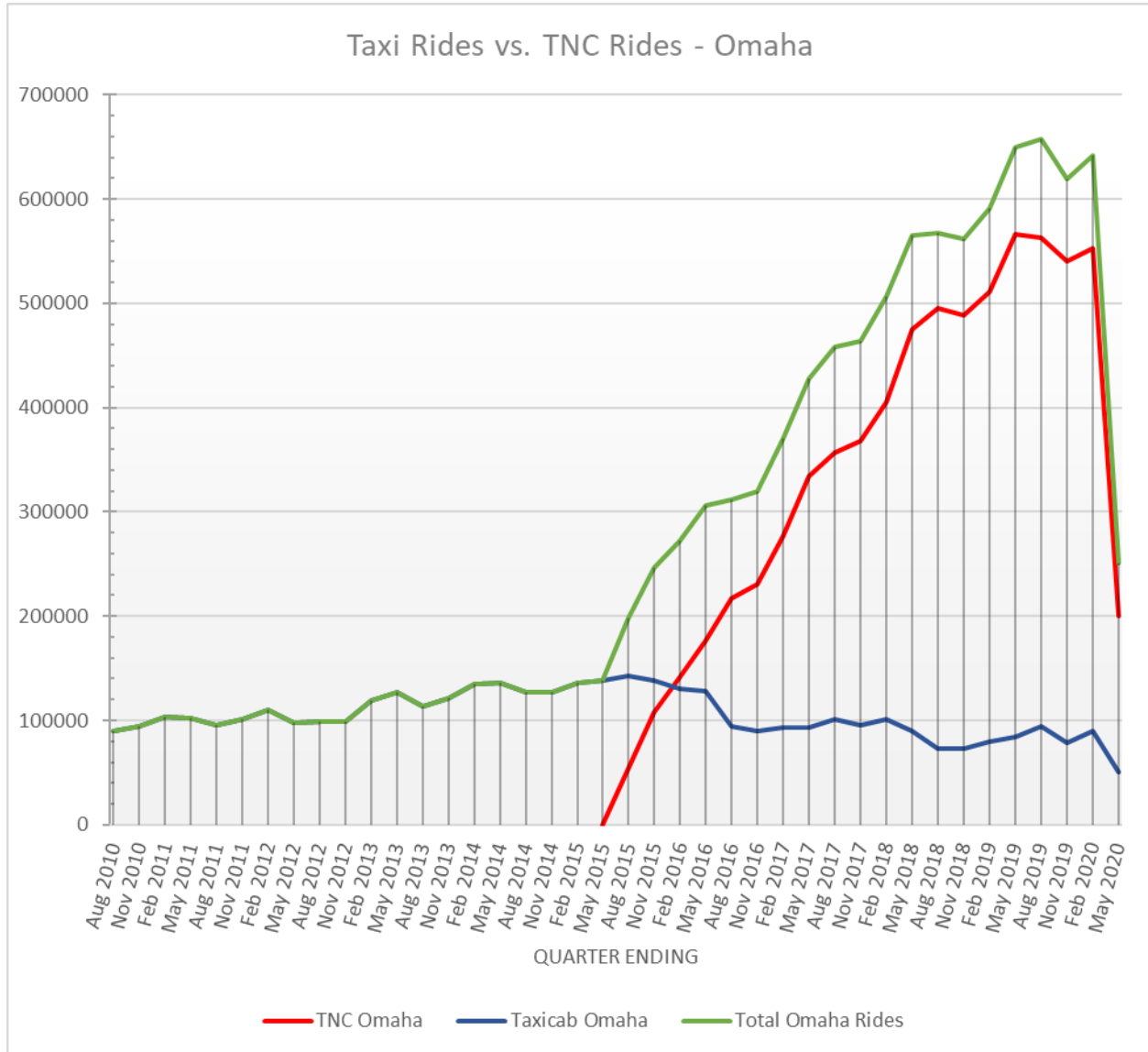
Statewide Impact

The statewide data shows that taxicab ride numbers continued to increase and decrease depending upon seasons and events, and TNC ride totals continued their own increases and decreases in the market. However, the COVID-19 pandemic has disrupted any trends that were occurring for both TNCs and taxicab carriers which makes it difficult to draw any conclusions of the impact of the TNCs overall on the taxicab industry.



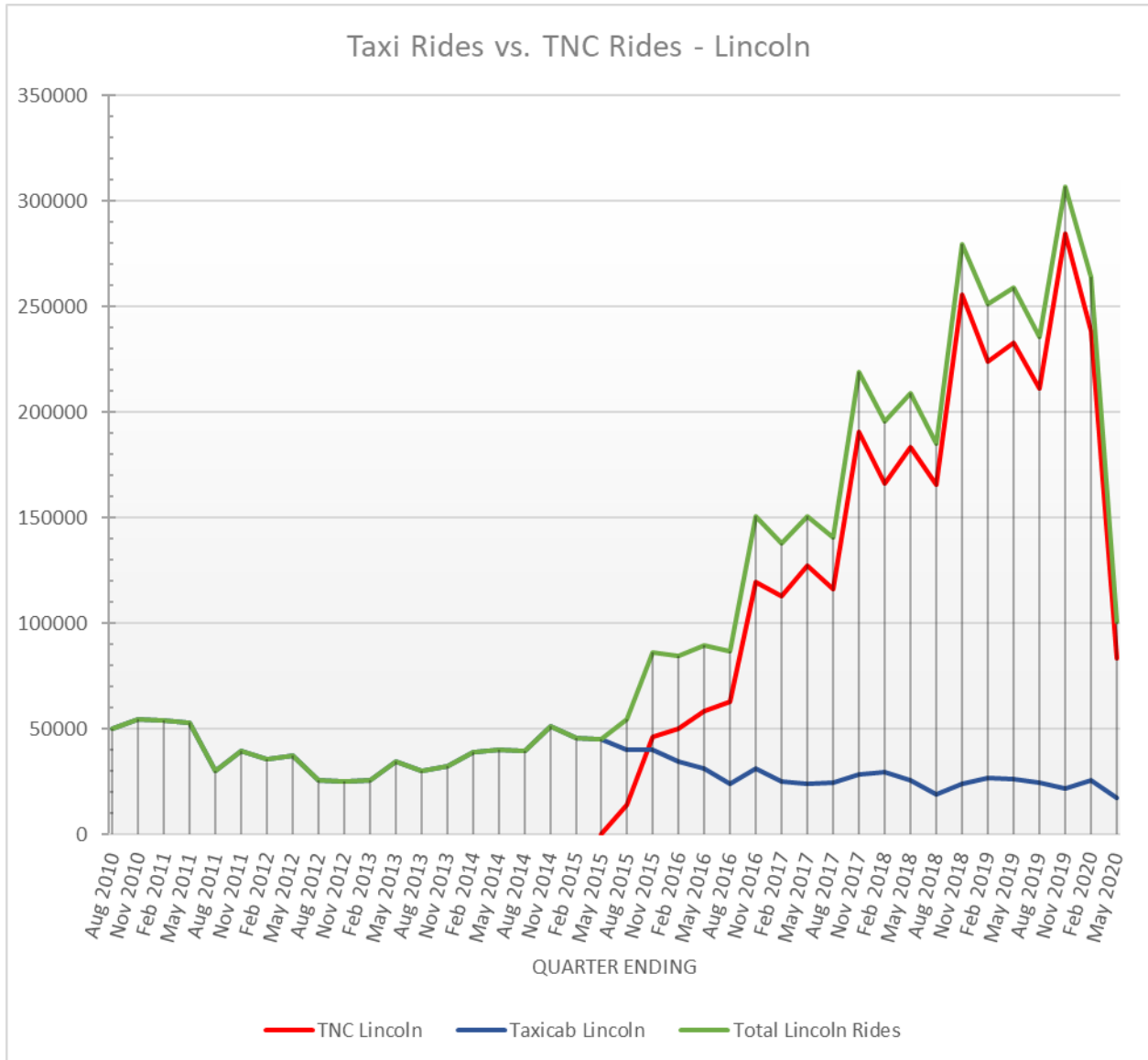
Omaha

Taxicab rides saw an ebb and flow between May and August 2019, with increases just under 2017 ride numbers. TNC rides showed a decline between May and November 2019, but any increase that may have usually occurred in the spring was halted due to the pandemic.



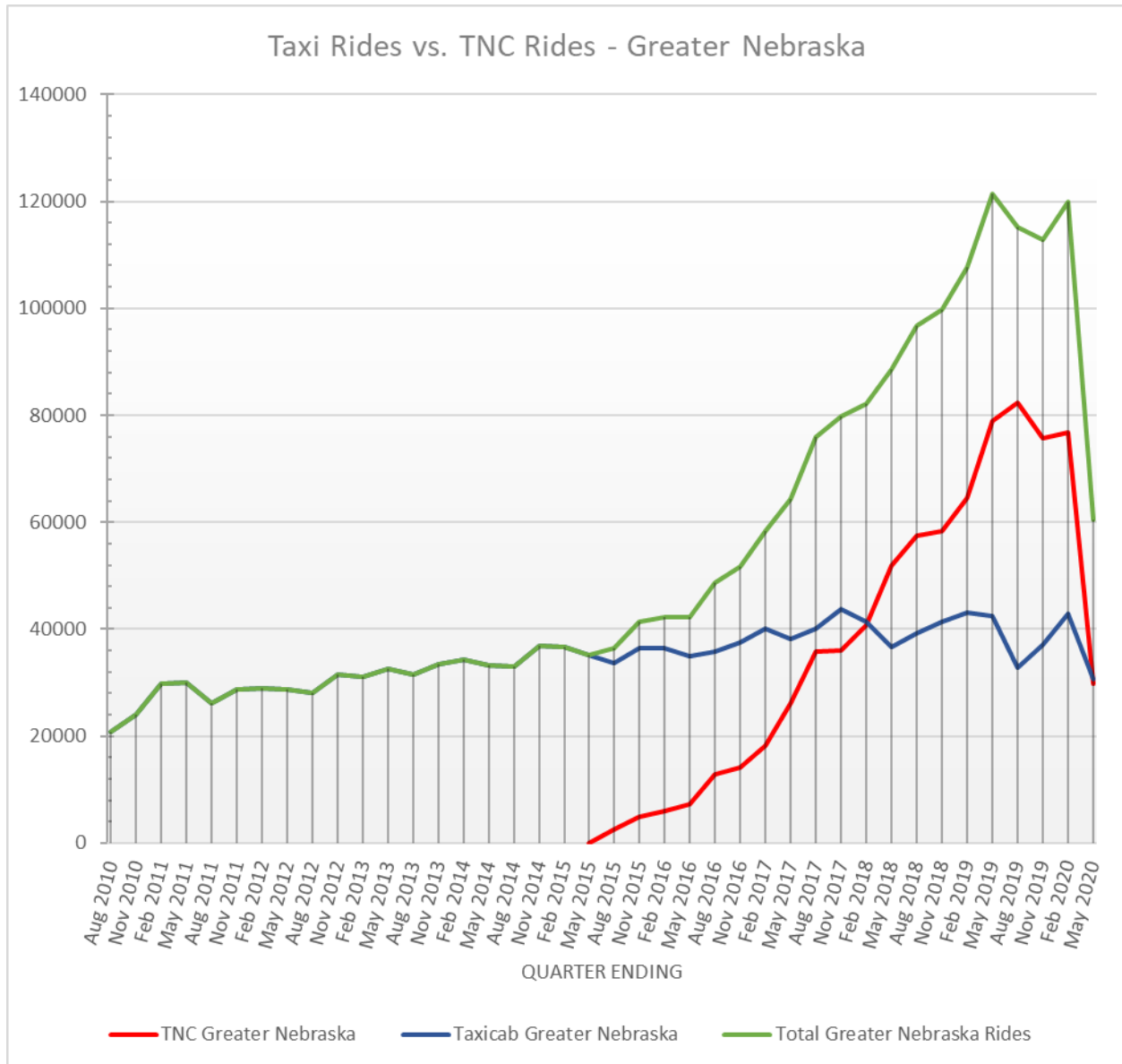
Lincoln

Taxicab ridership in Lincoln began to increase and level in August 2018, with an increase in rides prior to the pandemic. 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 showed a sharp decline and increase between May 2019 and February 2020, with taxicab ridership back to levels seen in 2017. After August 2019, TNC ridership declined as taxicab ridership increased. As illustrated in the Omaha and Lincoln markets, any trend that may have been developing was halted in February 2020.



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.^v 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. Dynamic Pricing: last spring's flooding and this year's pandemic 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.

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

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

ⁱⁱⁱ "Nebraska Faces Over \$1.3 Billion in Flood Losses", National Public Radio, March 21, 2019, <https://www.npr.org/2019/03/21/705408364/nebraska-faces-over-1-3-billion-in-flood-losses> (last visited 12/1/2020).

^{iv} Executive Order No. 19-09 Transportation Network Companies, issued June 12, 2019, <http://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/19-09.pdf> (last visited 12/1/2020).

^v "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).