

NEBRASKA PUBLIC SERVICE COMMISSION

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



December 30, 2021

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December 30, 2021

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol, Room 2028
P.O. Box 94604
Lincoln, NE 68509-4604

Dear Mr. O'Donnell:

On behalf of the Nebraska Public Service Commission, I submit the sixth annual report of the status of implementing the statutory provisions of LB 629, entered into law during the 2015 Legislative session.

This report will cover relevant information related to Nebraska's transportation network companies (TNCs) and taxicab companies from July 1, 2020 through June 30, 2021. In particular, the report will show the impact of the first year of the pandemic, which was severe across all transportation modes. As the pandemic continues, the Commission will monitor how the industry is recovering and work to ensure safe, reliable, and accessible transportation for all.

We hope that the information provided will be useful in the Legislature's continued assessment of LB 629's effectiveness. If you have any questions, please contact our Commissioners or staff.

Sincerely,

Dan Watermeier
Chair

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 2022 TNC Annual Report are as follows:

- *Fees:* The Commission determined that the 2022 per-vehicle fee for TNCs should remain at \$80 per vehicle.
- *Impact of TNCs and Other Considerations.* Both the TNC and taxicab industries were hit hard at the start of the COVID-19 global pandemic in 2020. Data shows some recovery, but it is too early to tell what the long-term effects of the disruption will be.

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; to perform inspections related to intrastate railroad safety; to set the fares charged by passenger carriers; 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. The Commission's transportation authority shifted in 2020 to license household goods movers and railroad employee transportation and no longer set rates and charges for these services.

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, 2021, the balance of the Fund was approximately \$90,642.77.

On September 28, 2021, 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 4 lienholder notification forms between December 3, 2020 and December 3, 2021.

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 2020-2021, 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

With the onset of the COVID-19 pandemic in the spring of 2020, all facets of the transportation industry were severely impacted. The carriers adhered to the Directed Health Measures implemented across the state, taking extra precautions to ensure driver and passenger safety. Carriers also continue to adhere to the January 29, 2021 Order of the Centers for Disease Control (CDC) requiring masks be worn by all people while on public transportation. TNCs and taxicabs were included in the CDC's definition of transportation conveyance covered by the Order that will remain in effect into 2022.

In 2020, taxicab carriers 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. The modification or cancellation of local Directed Health Measures and resumed contracted services contribute to ridership recovery.

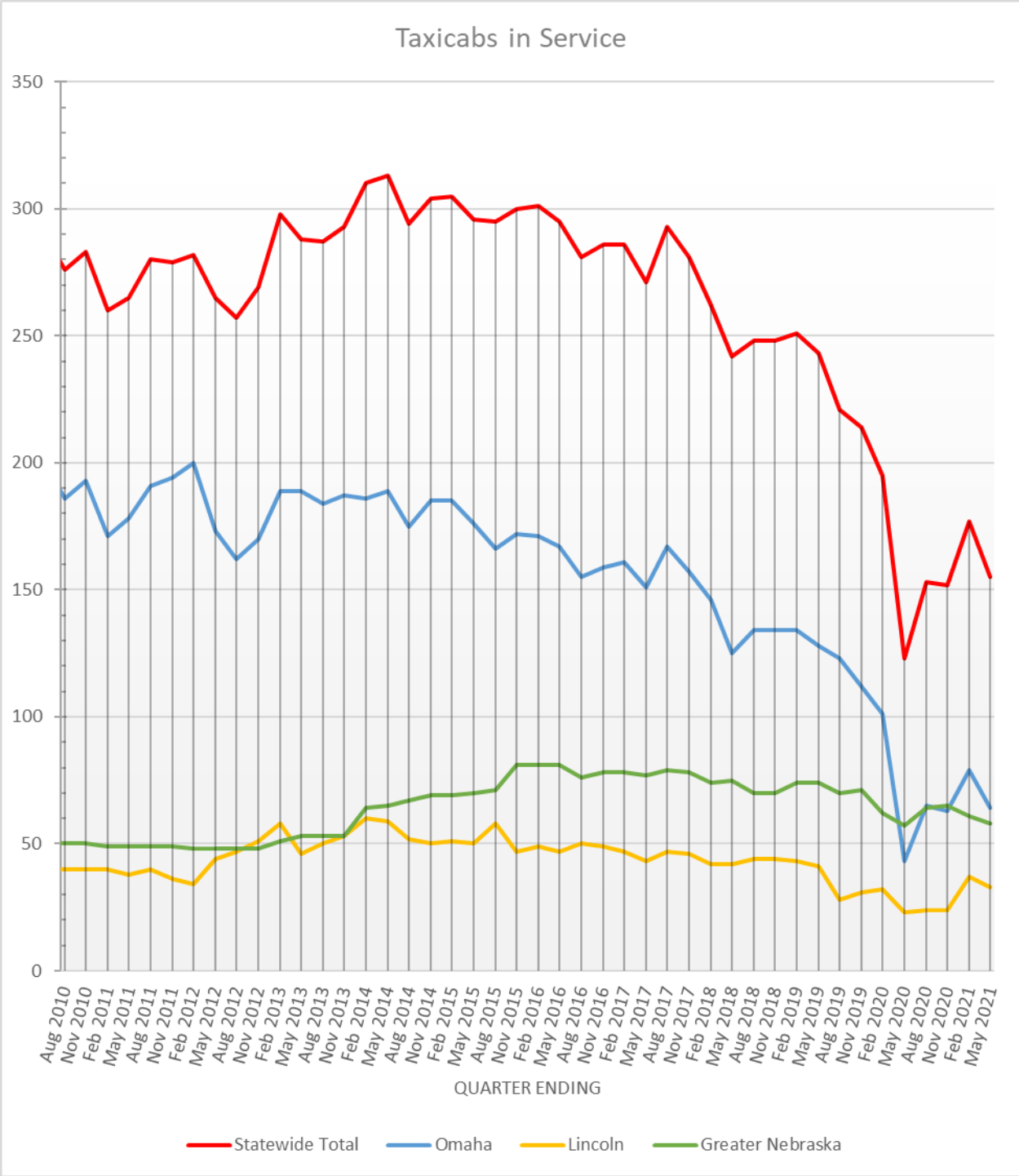
Taxicab Carriers

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 20 taxicab carriers that hold a Certificate of Public Convenience and Necessity to provide taxi services in the State of Nebraska. In 2021, one taxicab company suspended operations, one cancelled its authority, another ended its taxi services and continues to operate under a different service class, and the Commission is currently considering approval of the purchase of one taxicab company.

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.

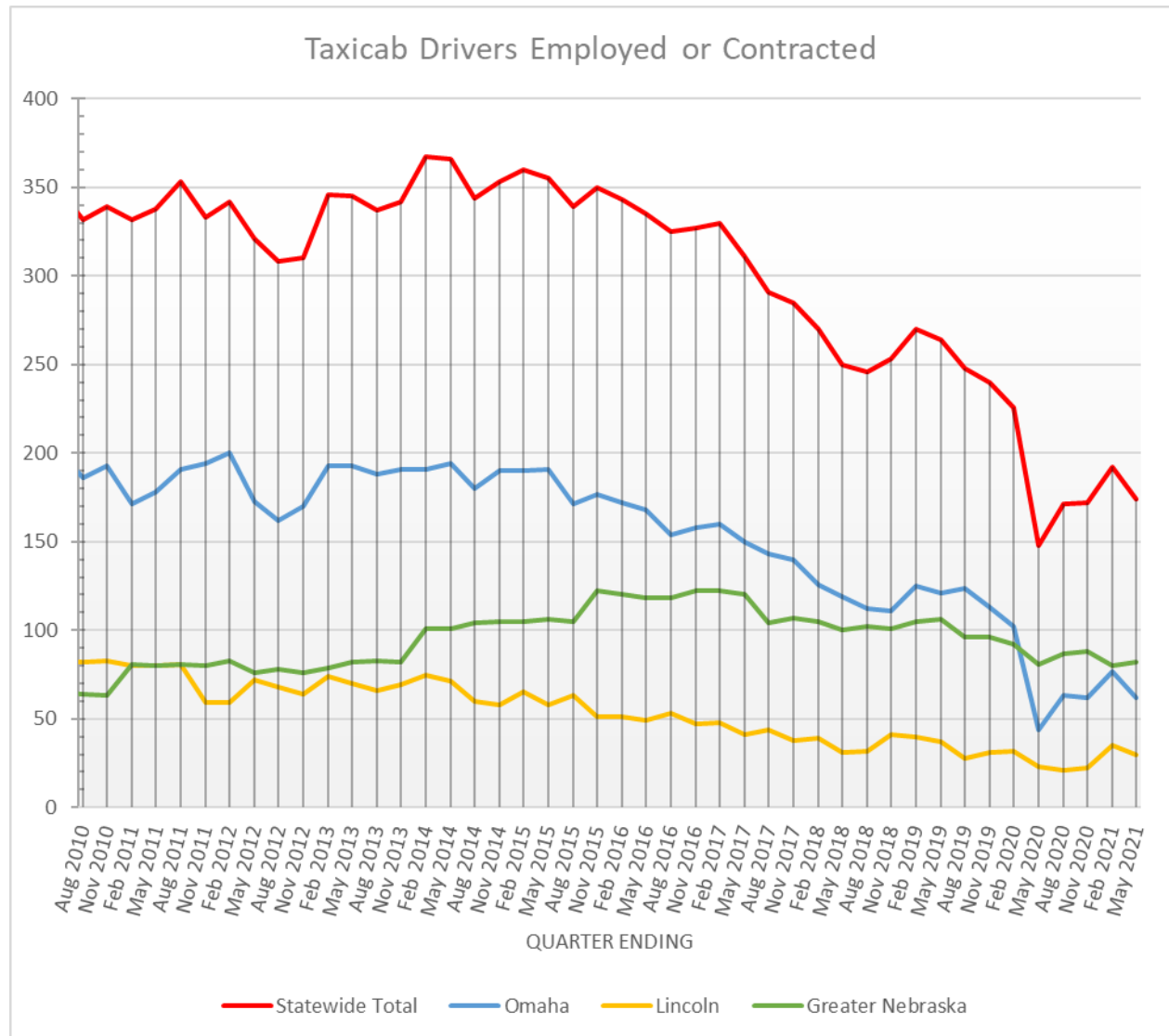
Each taxicab carrier annually reports to the Commission the number of taxicabs in service, number of drivers employed or contracted, and the number of rides completed. Each taxicab carrier self-reports its numbers in quarterly increments. The following chart show the number of taxicabs in service since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



Statewide, the number of taxicabs in service plummeted in the spring of 2020 due to the global COVID-19 pandemic. The most severe drop off is noted in the Omaha metro area, dropping briefly lower than what was reported for Greater Nebraska and recovery well short of pre-pandemic numbers.

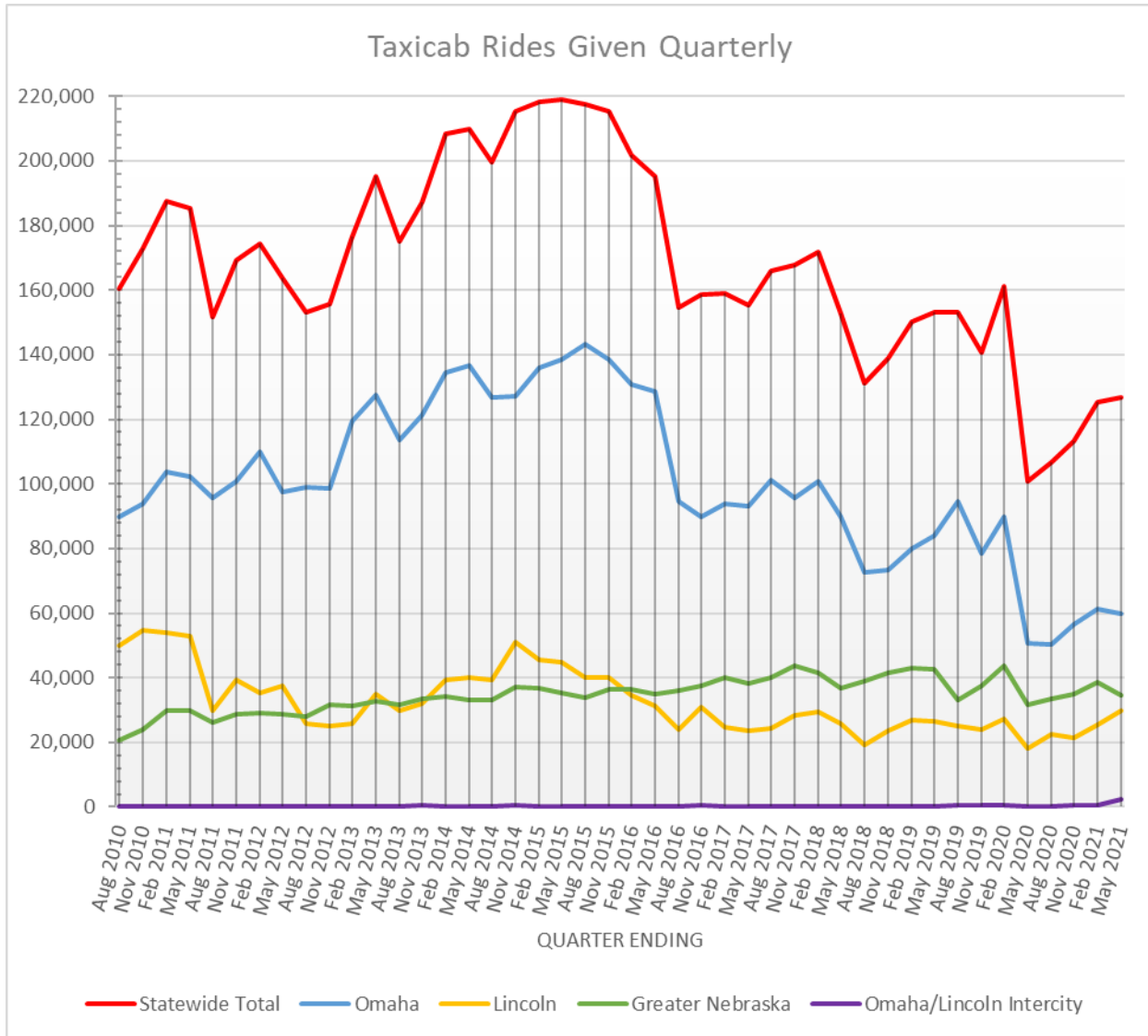
Last year's Report noted that the number of taxicab vehicles in service were in decline in all areas since the previous year's Report. Numbers reported for the first half of 2021 show Lincoln making its way back to pre-pandemic numbers.

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 with slight recovery into 2021. Greater Nebraska reports the highest number of drivers at the end of May 2021:

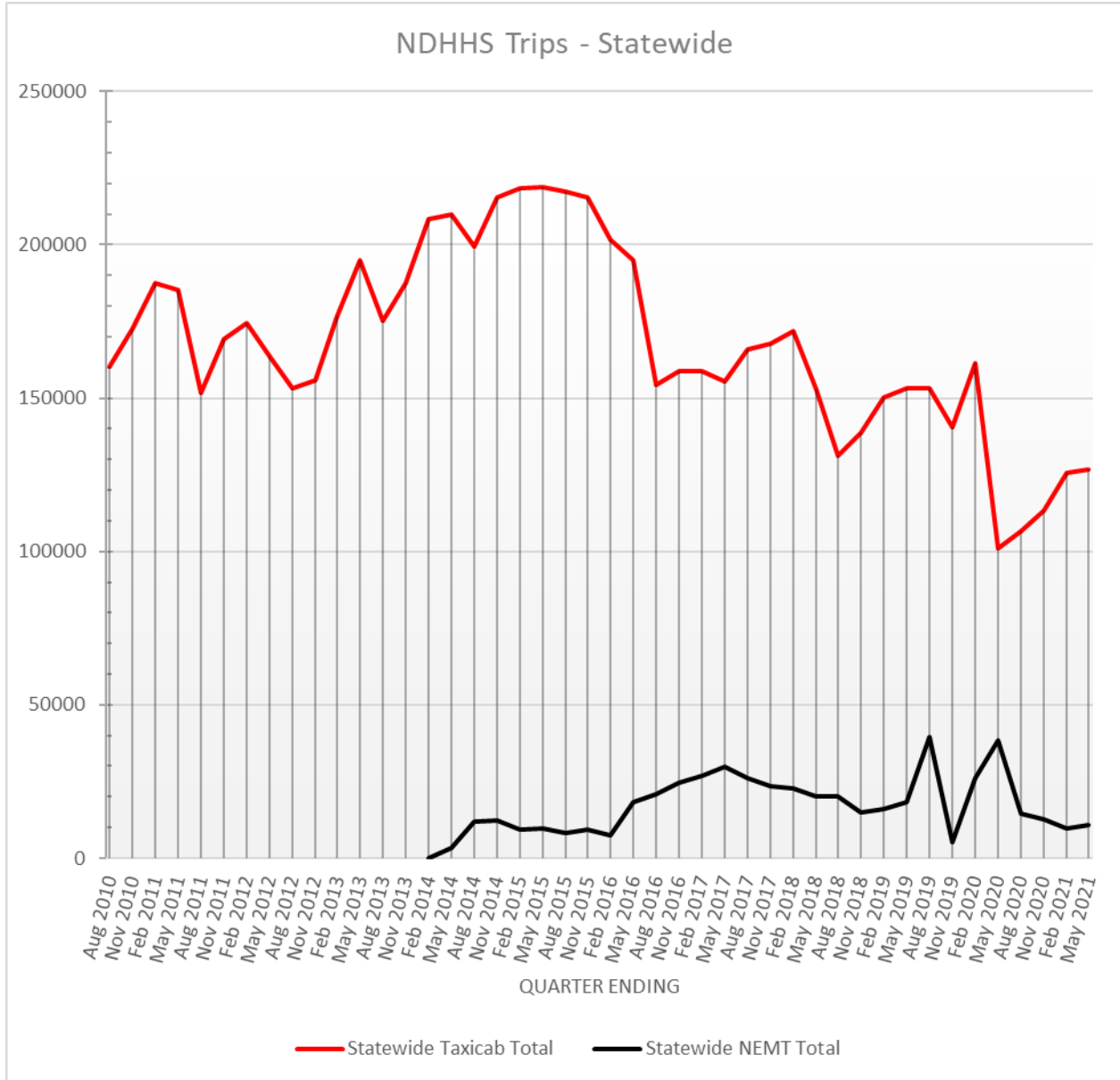


As common carriers, taxicab carriers provide transportation to the general public. Taxicab carriers may also provide transportation services as part of contracts with various public and private entities. The following chart shows the total rides completed for taxicab companies since May 2010. Omaha again shows dramatic shifts in ridership since the last Report and the most severe impact at the pandemic's start. Greater

Nebraska and Lincoln also noted drops from February 2020 to May 2020, but each show steady increase to numbers seen prior to the start of the pandemic:



About 14 of the 20 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:

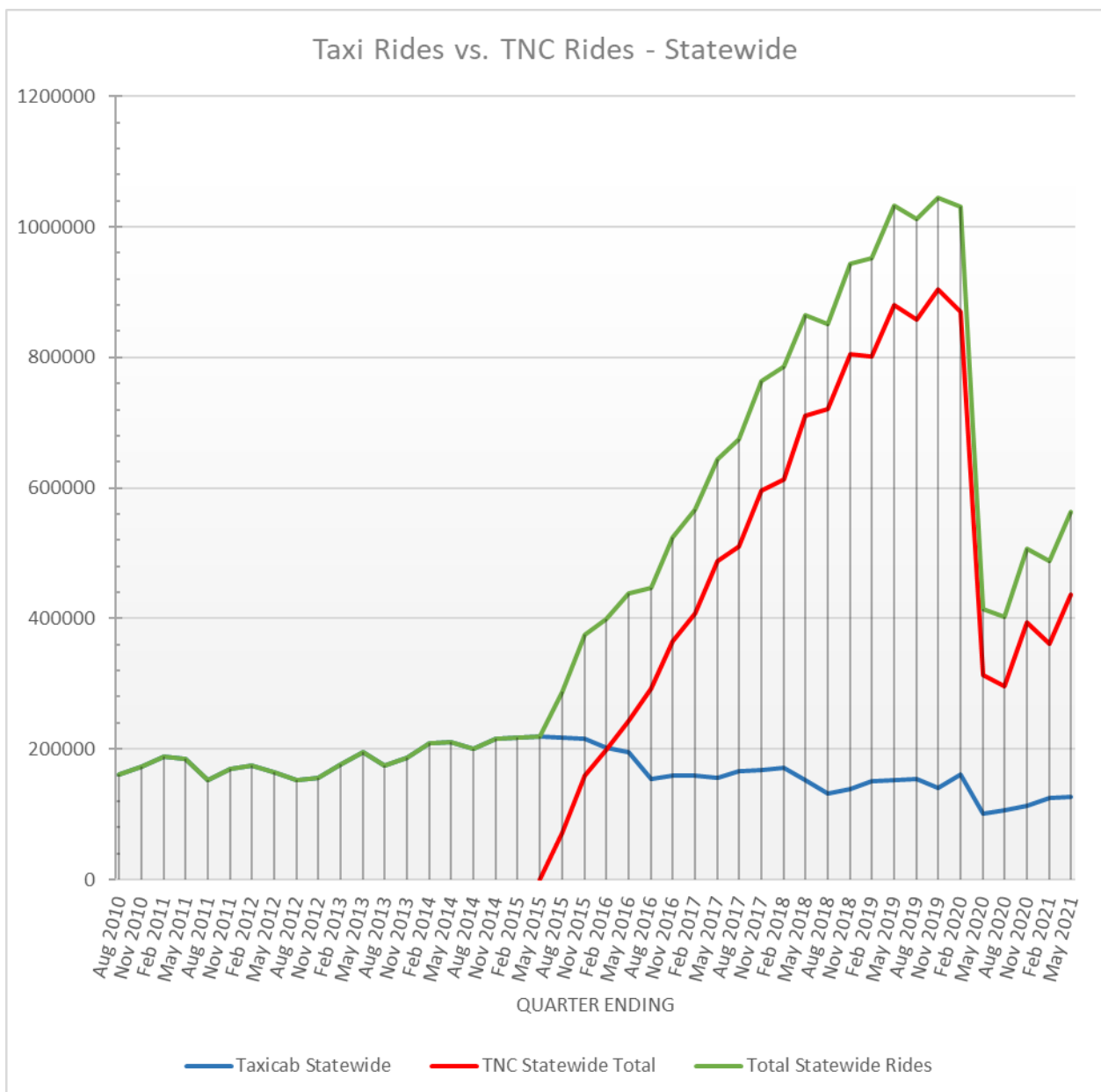


Neb. Rev. Stat. § 75-342 provides that TNCs may apply with the Commission for HHS Designation to provide NEMT services for NDHHS. Any TNC application for HHS Designation would be reviewed using the same standards that the Commission would utilize to review HHS Designation applications for other passenger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

TNC Impact on Taxicab Industry in Nebraska

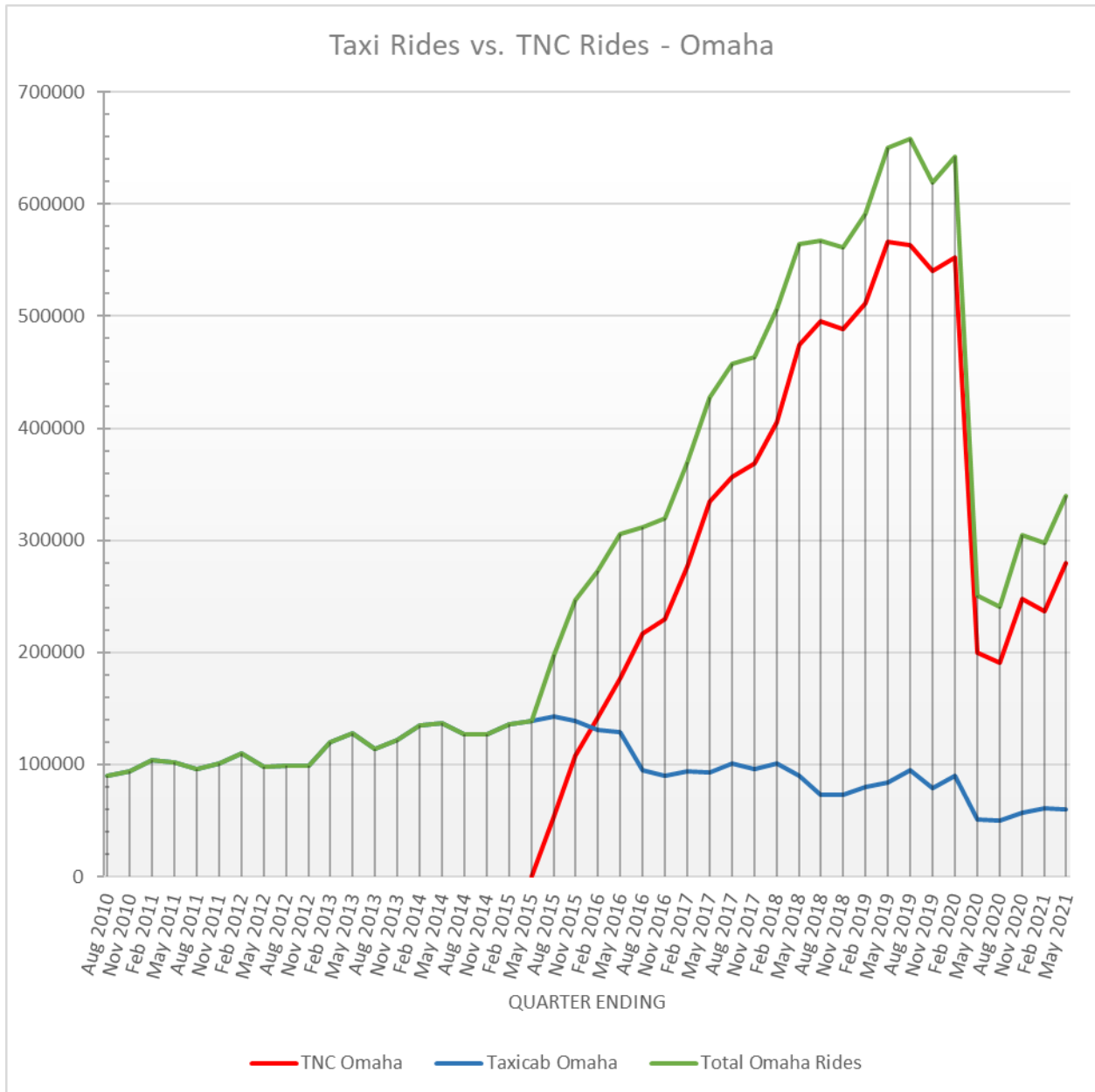
Statewide Impact

The statewide data shows that taxicab ride numbers have remained steady after February 2020 and not yet recovered to pre-pandemic statewide numbers. TNC ride totals continued their own increases and decreases in the market after the severe drop at the start of the COVID-19 pandemic. The pandemic continues to disrupt 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.



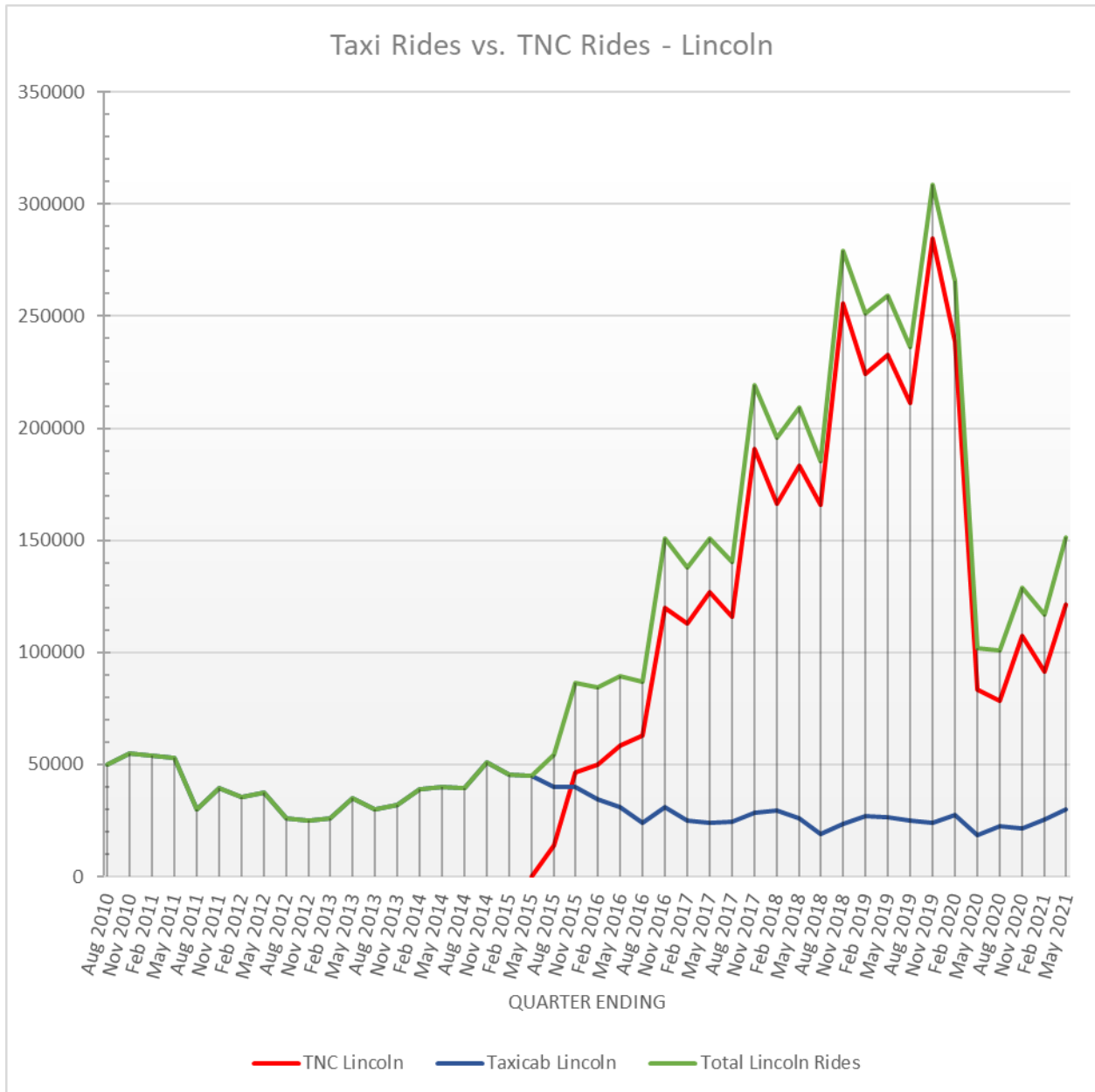
Omaha

Both taxicab and TNC ridership took a severe drop starting February 2020. TNCs began to recover at the end of summer 2020 and into 2021. Meanwhile, taxicab ridership remains low and yet to show much upward trend.



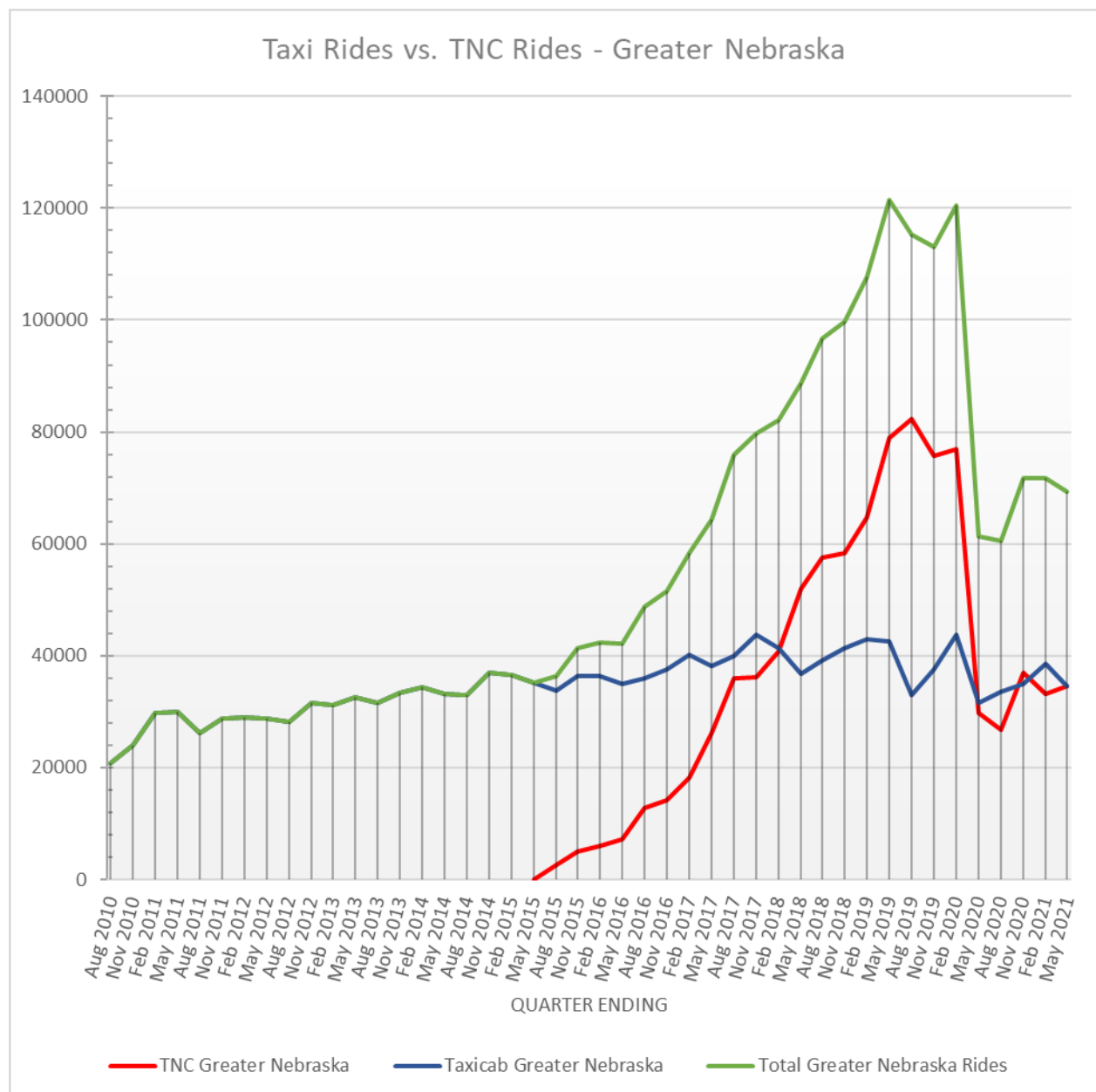
Lincoln

TNC ridership in Lincoln saw a similar steep decline as what was seen in Omaha in February 2020. After August 2020, TNC ridership showed ridership spikes at intervals seen at times prior to the pandemic. Taxicab ridership has seemed to fare better in Lincoln, with ridership recovering back to levels reported prior to the pandemic.



Greater Nebraska

Taxicab ridership outside of Omaha and Lincoln showed steady recovery starting May 2020 after the sharp decline in ridership in February 2020. Greater Nebraska is the only reporting area where TNC ridership dropped below taxicab ridership at the pandemic's start. Although it has increased since, it has yet to improve beyond taxicab ridership. Additional data reporting will be needed before any conclusions can be made.



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 an important issue. 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: as mentioned in the 2020 Report, the pandemic triggered Neb. Rev. Stat. § 75-327(d)(iv), 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. However, Executive Order No, 20-29 effective July 1, 2020 waived that requirement. 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).