

NEBRASKA PUBLIC SERVICE COMMISSION

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



December 18, 2023

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December 18, 2023

Brandon Metzler
Clerk of the Legislature
State Capitol, Room 2018
P.O. Box 94604
Lincoln, NE 68509-4604

Dear Mr. Metzler:

This is the 8th 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 2023 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 will cover relevant information related to Nebraska's transportation network companies (TNCs) and taxicab companies from July 1, 2022 through June 30, 2023. In particular, the report will show the outlook of TNCs and taxicabs two years after the COVID-19 pandemic. Mainly, that overall ridership for TNCs remain on the rise while taxicab ridership is still at levels lower than those pre-pandemic. The data continues to show that TNC ridership and taxicab ridership have their own markets that do not seem to have a quantifiable effect on each other.

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 2024 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 little recovery within the taxicab industry, except for an anomaly within ridership in Greater Nebraska between May 2021 and May 2022, with no visible trend towards achieving pre-pandemic levels. However, the data does suggest that TNCs may have resumed the trend established prior to the pandemic.

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; certain aspects of 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 due to the federal preemption of most aspects of the railroad industry, the Commission has since gained authority to certificate and regulate passenger transportation companies; to perform inspections related to certain aspects of 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, 2023, the balance of the Fund was approximately \$71,858.88.

On September 26, 2023, the Commission held a public hearing and determined that the per-vehicle fee for 2024 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 TNCs in the state. On September 13, 2022, the Commission issued a TNC permit to Kidcaboo, LLC; bringing the number of active TNCs in the state to three (3). The Commission estimates that there are well over 600 TNC drivers between the three 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 did not receive a lienholder notification form between December 3, 2022 and December 3, 2023.

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 2022-2023, the Commission did not receive any specific tips that led to informal investigations by Commission staff. However, Transportation Investigators engage in monitoring activities proactively.

Taxicab Carriers

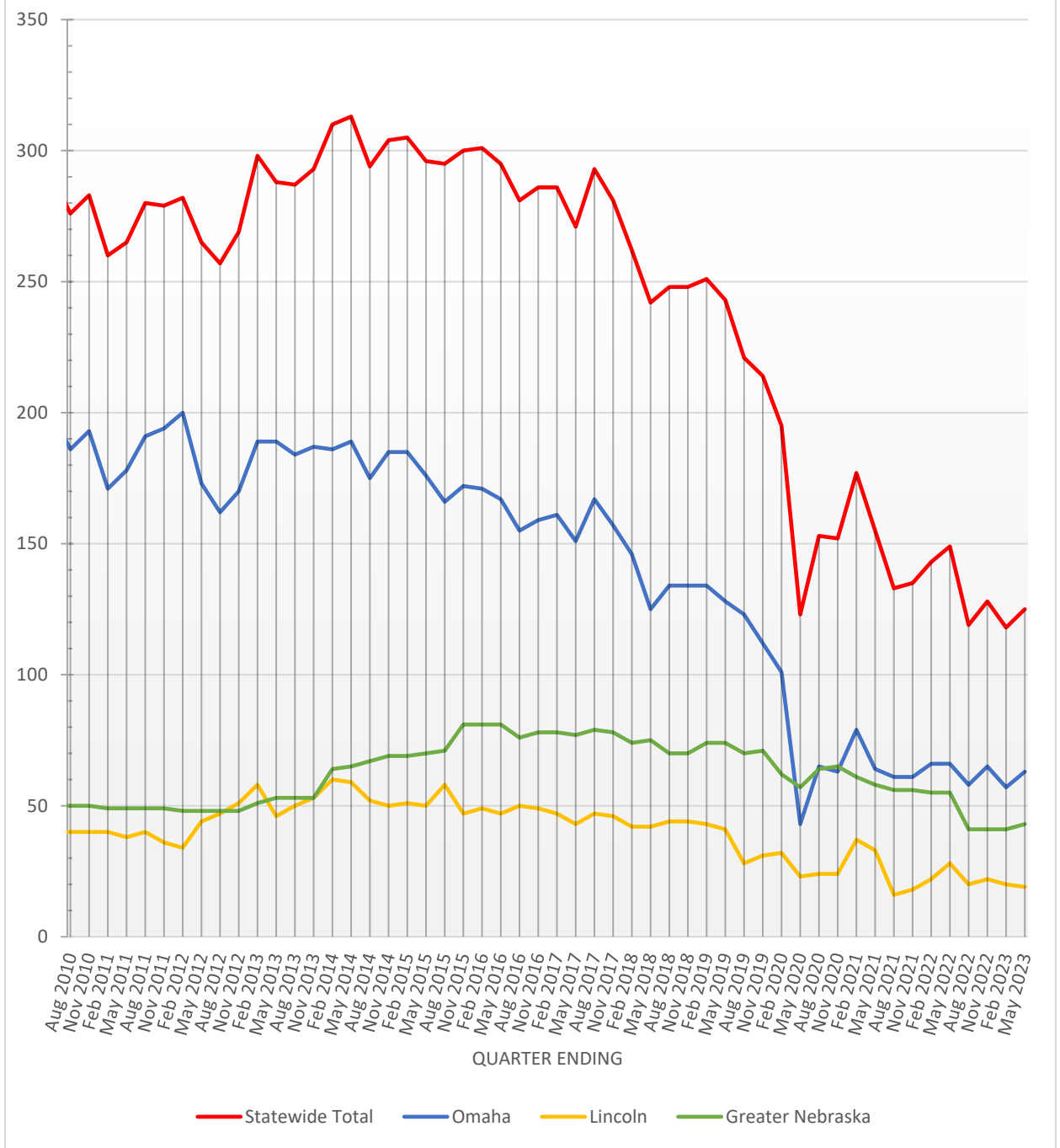
The Commission defines taxi service as the business of carrying passengers for hire by a vehicle along the most direct route between the points of origin and destination or a route under the control of the person who hired the vehicle. Taxi rides are either prearranged or on-demand and conducted within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

There are currently 19 taxicab carriers that hold a Certificate of Public Convenience and Necessity to provide taxi services in the State of Nebraska. In 2023, three taxicab company suspended operations for a period of time and the Commission is currently considering approval of one new 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:

Taxicabs in Service

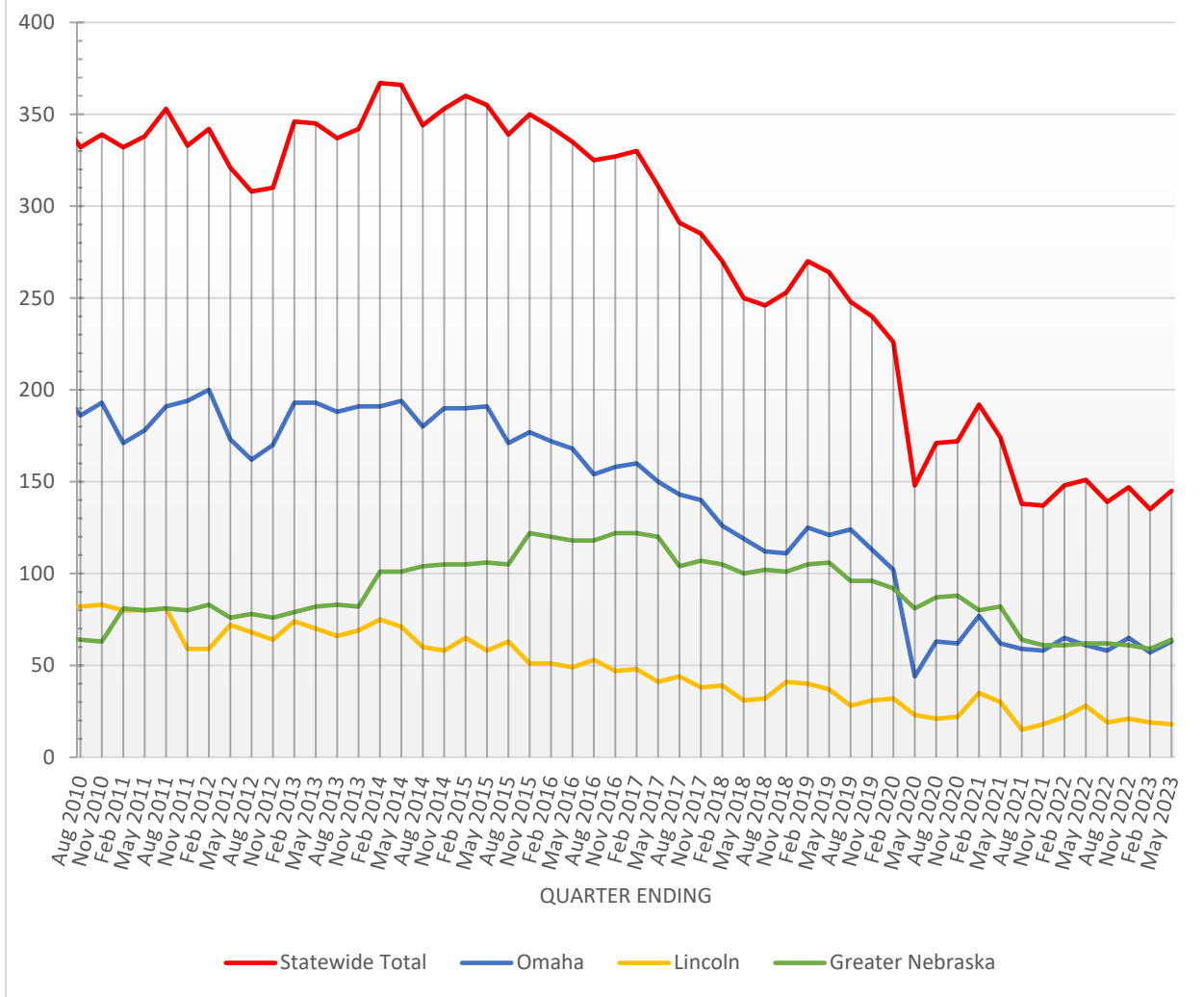


Statewide, the number of taxicabs in service has decreased compared to last year's reporting period. The Omaha metro area has experienced very little dispersion in the years following the COVID-19 pandemic. It appears that post-pandemic levels are plateaued and a new baseline has been established. The Lincoln area has remained in a constant state of incremental decline since the pandemic. Greater Nebraska appears the most responsible for the overall decrease in taxicabs in service across the state for 2022-2023, as there was steep decrease in the number of vehicles in service in Greater Nebraska starting in May 2022.

Last year's report noted an increase in the number of taxicabs in service showing a gradual recovery to pre-pandemic numbers. More specifically, the report noted that although all areas were negatively impacted by the pandemic, the Lincoln area appeared to be returning to pre-pandemic numbers while Greater Nebraska remained at a slight decline. Data for this reporting period shows that the Lincoln area appears not to be returning to pre-pandemic numbers, but rather still in search of what a post-pandemic normal may be. Greater Nebraska meanwhile continues more on a sharp decline. The data provided in this reporting period provides a more grim outlook in terms of a post-pandemic taxicab industry than anticipated in prior years.

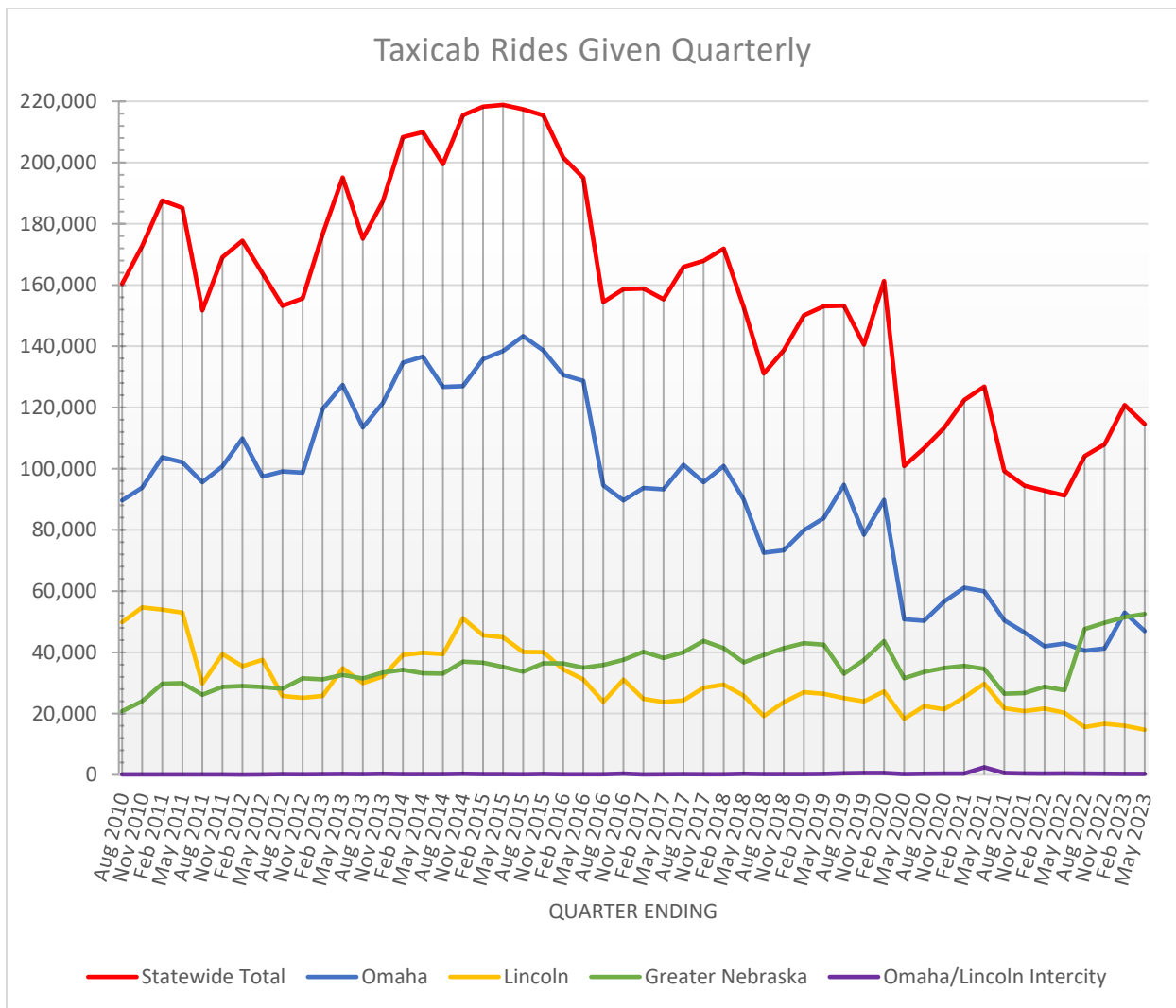
The next chart shows the number of drivers either employed or contracted with a certificated taxicab carrier since May 2010. Beginning in early 2019, there has been a constant decline in numbers of drivers of taxicabs. The Omaha metro area experienced the sharpest decline, but the Lincoln area and Greater Nebraska have also experienced a constant decline. However, since mid-2022, all areas have plateaued.

Taxicab Drivers Employed or Contracted

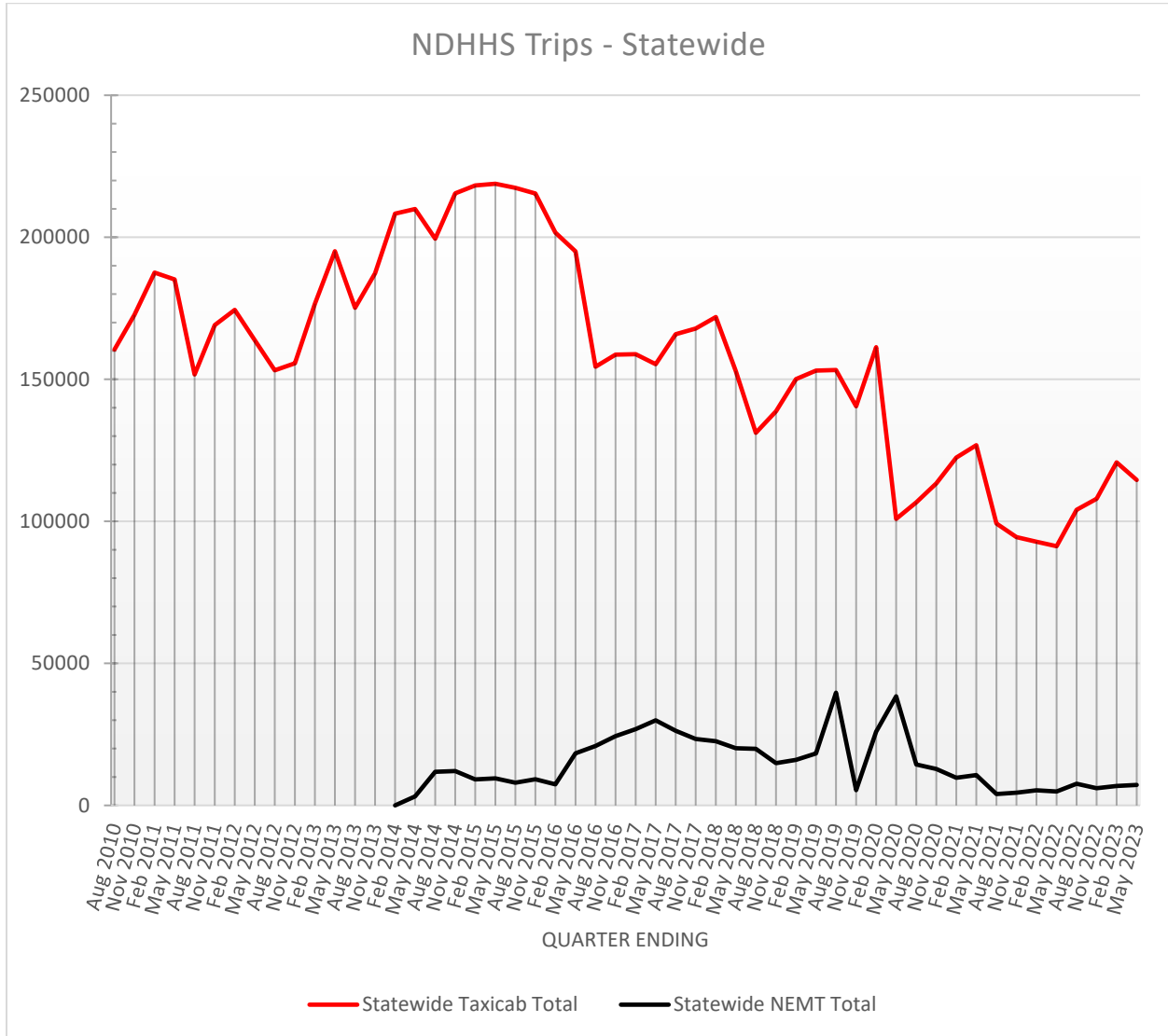


As common carriers, taxicab carriers provide transportation to the general public. Taxicab carriers may also provide transportation services as part of contracts with various public and private entities. The following chart shows the total rides completed for taxicab companies since May 2010, by quarter.

Statewide, there was a significant increase in total number of ridership since the last Report. The increase can be attributed mostly to a substantial increase in ridership in Greater Nebraska. More specifically, Greater Nebraska reached its peak ridership, dating back to the first data received in late 2010, between May 2022 and August 2022. This increase continued, albeit not as sharp from August 2022 to May 2023. During this same period ridership in the Omaha metro area also increased but tapered off in early 2023. However, ridership in the Lincoln area remained in a steady decrease, as has been the trend since mid-2020.



About 15 of the 18 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

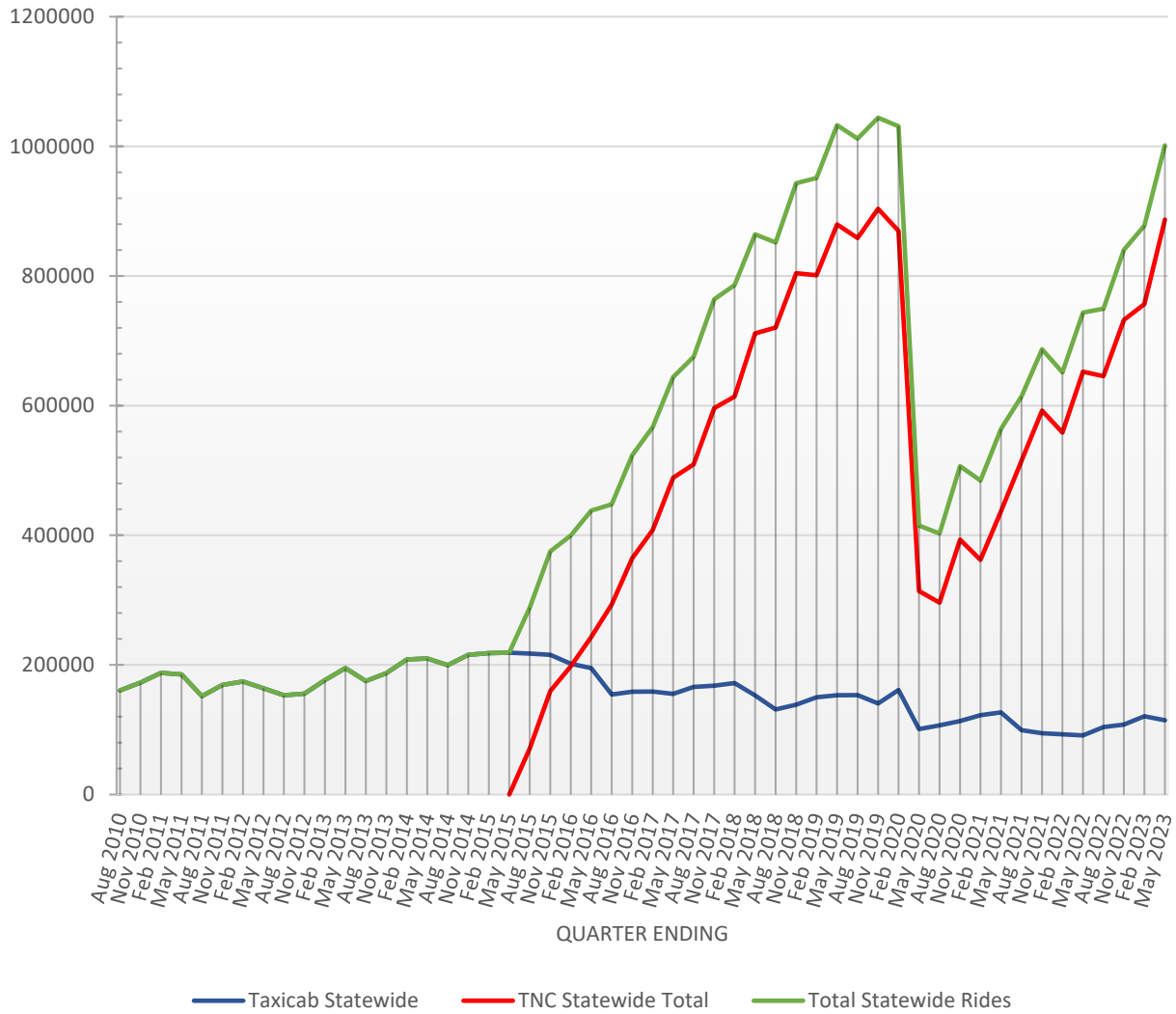
TNC Impact on Taxicab Industry in Nebraska

Statewide Impact

The Statewide data shows that taxicab ride numbers have remained on a steady decline since May of 2015. The most recent data shows a slight increase in the number of taxicab rides. While ridership does not appear to be trending towards pre-pandemic levels, it does appear to be on the rise. TNC ridership continues to increase since ridership drastically reduced due to the COVID-19 pandemic. TNC ridership continues to mirror the ridership between 2014-2020 after the brief disruption in ridership during middle to late 2020.

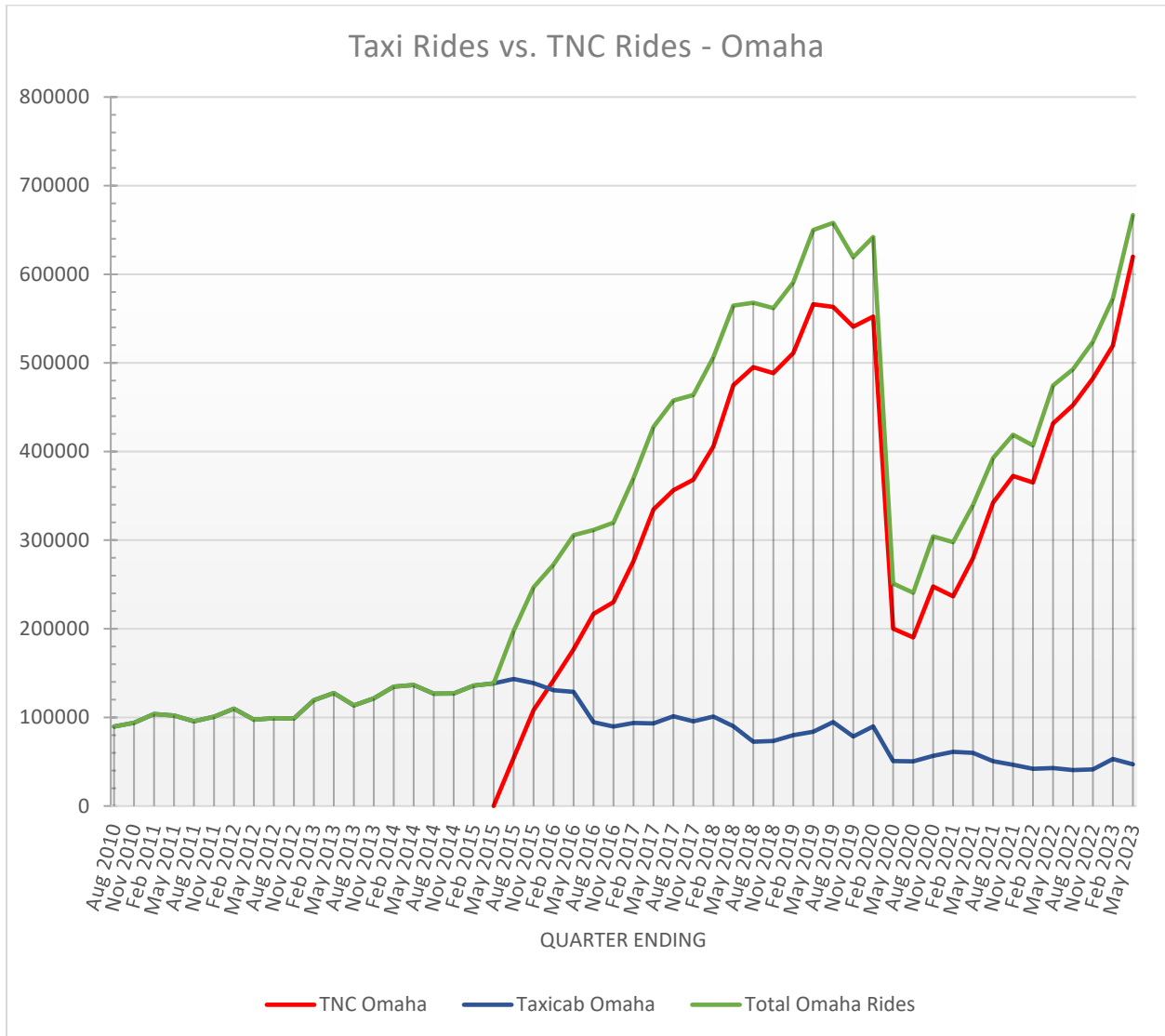
In last year's report, we noted that the data gathered over the last decade provides enough substance to conclude that there does not exist a 1:1 correlation between TNC ridership and taxicab ridership. In other words, data does not show that an increase in TNC ridership results in a decrease in taxicab ridership. TNCs and taxicabs appear to have their own market share, and not in direct competition over a shared consumer base. This year's data does not rebut that assessment. The data continues to showcase that TNCs and taxicabs are independent of each other in terms of ridership. A holistic review of the data leads to the conclusion that there are variables that affect ridership that quantitative data is unable to capture and without identifying those variables the true impact that TNC have on the taxicab industry cannot be articulated. The following chart shows the reported ridership for both TNCs and taxicabs statewide:

Taxi Rides vs. TNC Rides - Statewide



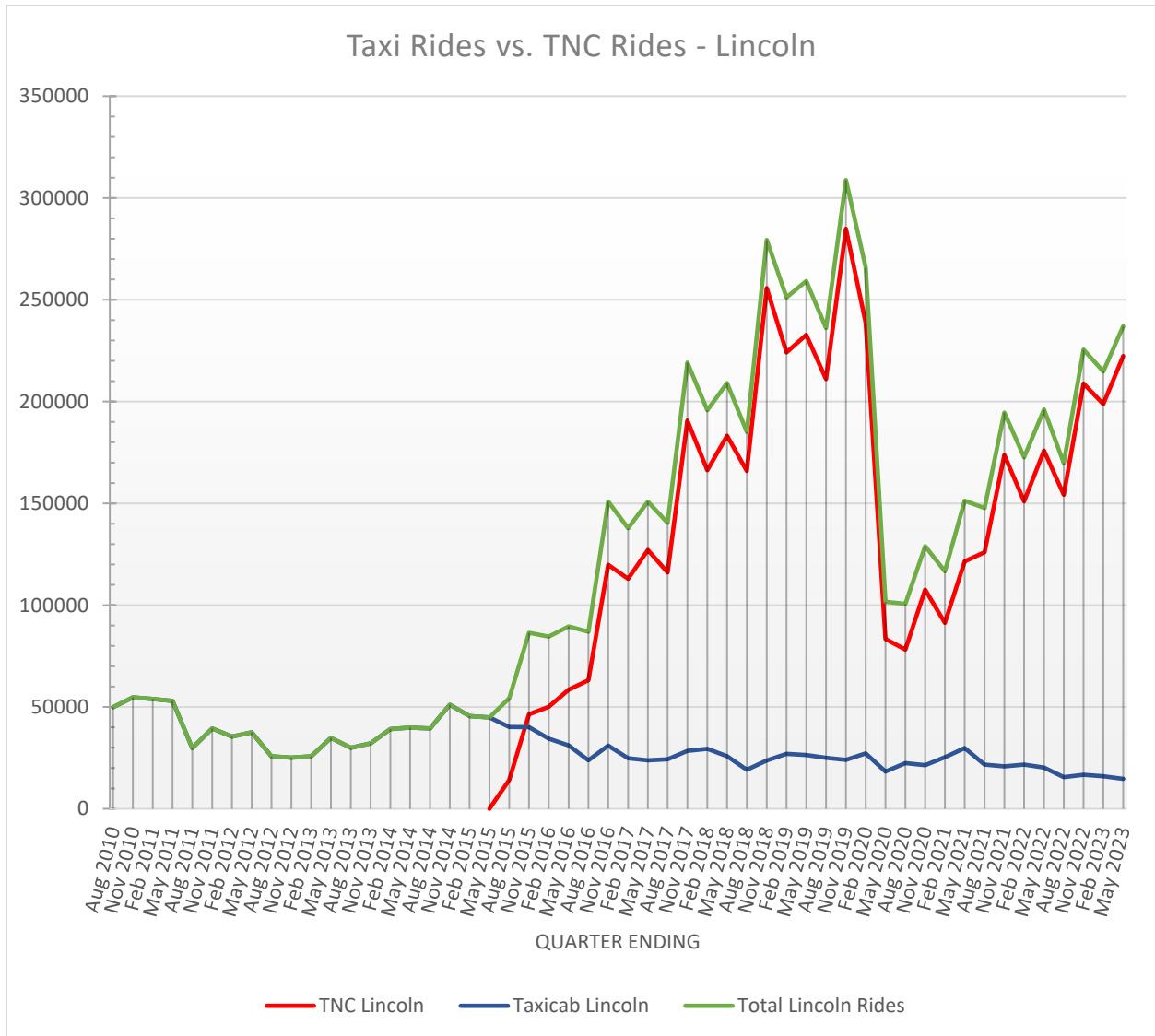
Omaha

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; that recovery has continued through spring 2023. Taxicab ridership has remained on a steady decline with little indication of a possible upwards trend.



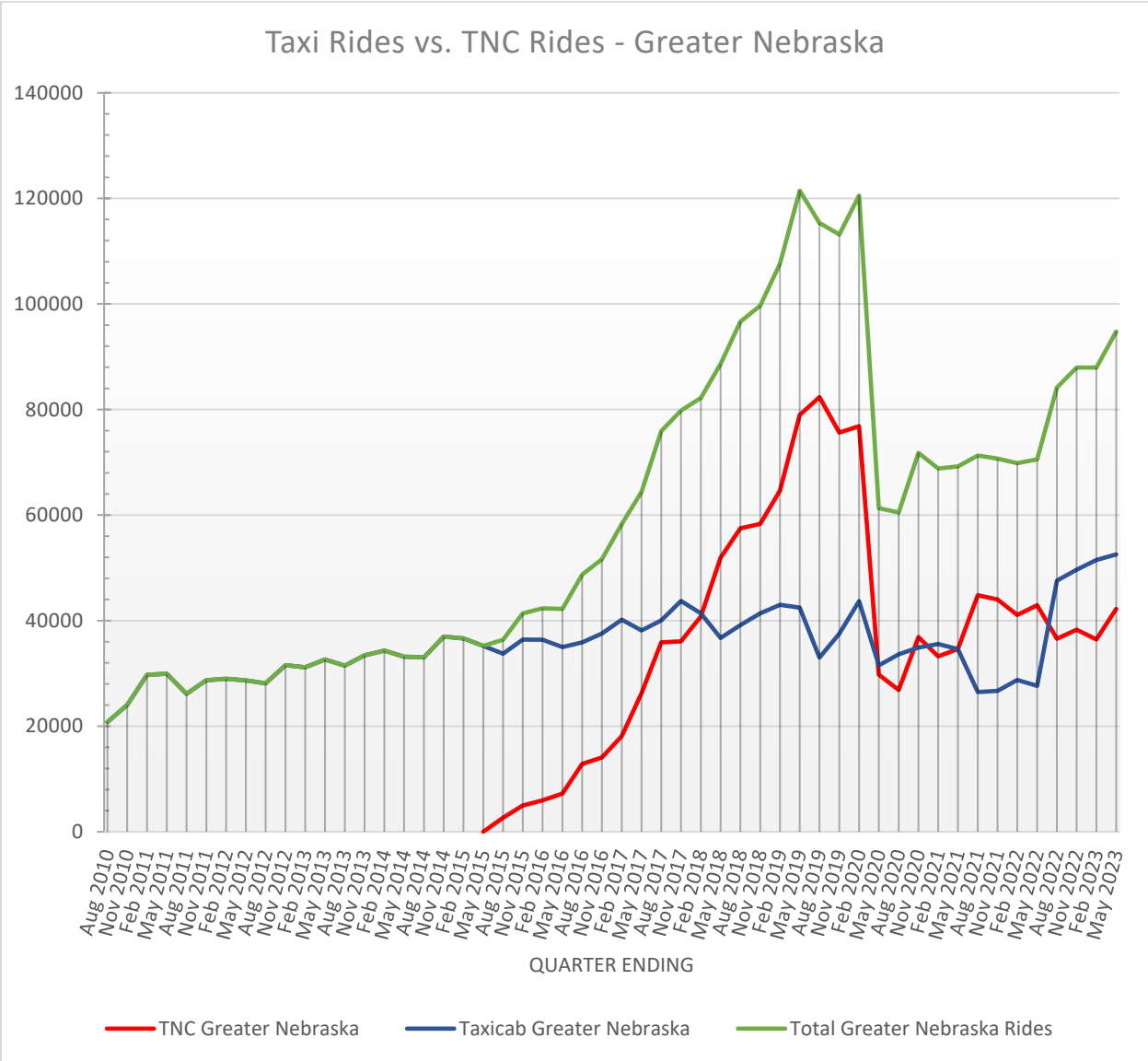
Lincoln

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 in Lincoln, as the case in Omaha, remains on a steady decline.



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. The data collected during the current reporting period shows that taxicab ridership overtook TNC ridership in August 2022. Of particular note is the sharp increase in taxicab ridership in greater Nebraska beginning in May 2022. From May 2022 to August 2022, Greater Nebraska experienced the largest increase in taxicab ridership of any area since 2010. However, unlike the the period from May 2021 to May 2022, the data from this year's reporting period does not present the same 1:1 correlation of TNC ridership to taxicab ridership.



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).