

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

NEBRASKA PUBLIC SERVICE COMMISSION

DECEMBER 30, 2015

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December 30, 2015

On behalf of the Nebraska Public Service Commission, I submit the first annual report on the status of implementing the statutory provisions related to the regulation of transportation network companies (TNCs), entered into law during the 2015 Legislative session. This report covers Commission decisions and pertinent information related to the regulation of TNCs from May 2015 through December 2015.

With the passage of LB 629, the Commission has worked diligently to create a regulatory framework for TNCs. Interim policies were created to allow for TNCs to quickly come into compliance with Nebraska law. The Commission also held workshops and hearings to allow for input in creating rules and regulations that reflect the intentions of LB 629. We anticipate final approval of the rules in 2016. Additionally, the Commission created the Transportation Network Company Regulation Cash Fund to support the Commission's efforts to investigate TNC operations and compliance.

The Commission has endeavored to include information in this report to assist the Legislature in assessing the effectiveness of LB 629. We would be happy to provide additional information to the Legislature if necessary. If you have any questions, please contact our Commissioners or staff.

Sincerely,

A handwritten signature in black ink that reads "Gerald L. Vap". The signature is written in a cursive, flowing style.

Gerald L. Vap  
Chairman

## 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 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 and the State was divided into five districts, each to elect a commissioner to serve six-year terms. 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 is active on local, state, and national levels and contributes on those 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 tariff 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 granted the Commission the authority to regulate these new carriers. TNCs must apply for a permit to operate as a TNC in the State of

Nebraska prior to beginning operations in the State. The Commission does not approve these companies' rates, but each company is required to file its rates with the Commission.

*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 new statutory sections. The Commission collects annual and initial application fees from TNCs and remits these amounts to the Fund. As of December 15, 2015, the balance of the Fund was approximately \$14,019.92.

### TNC Regulation

NEB. REV. STAT. § 75-324 requires TNCs to apply with the Commission for permits to operate in Nebraska. The application gathers company contact information and rates, and verifies insurance certificates and drug and alcohol and anti-discrimination policies. Additionally, companies must indicate whether they have 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.

The Motor Transportation Department received and reviewed two applications for permits to operate as TNCs in the state of Nebraska between June 16, 2015 and December 31, 2015. The following companies received new authority to provide TNC services in Nebraska:

<b>Carrier</b>	<b>Authority Granted</b>
Rasier, LLC (Uber)	07-21-2015
Lyft, Inc.	09-15-2015

The Commission estimates that there are approximately 500 people who work as TNC drivers for either of the two companies, mostly in the Omaha and Lincoln metropolitan areas. No TNC permits were revoked in 2015.

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 45 lienholder notification forms between June 16, 2015 and December 30, 2015.

Additionally, NEB. REV. STAT. § 75-329 authorizes the Commission to conduct audits of TNC records to ensure public safety, including criminal background checks of drivers. Audits may be completed no more than once a calendar quarter unless the Commission deems it necessary to do so more frequently. The Commission will begin its first quarterly audits in the first quarter of 2016.

## *Dockets on Policy and Regulation*

After the passage of LB 629, the Commission was tasked with creating policies and rules and regulations to administer and enforce the intent of the new statutory authority granted by the Legislature. The following dockets relate to the regulation of TNCs:

TNC-1 *In the Matter of the Nebraska Public Service Commission, on its own motion, to Establish Interim Policies for the Implementation of LB 629 [2015] pending Final Rulemaking.*

On June 16, 2015, the Commission opened TNC-1 to propose a process for TNCs to comply with LB 629 while awaiting the adoption of final Commission rules and regulations. The Commission adopted an application form and fee schedule to be submitted by the TNC, as well as a Lienholder Notification form to be submitted by TNC drivers who must notify their lienholder of the intent to use the driver's personal vehicle to provide transportation services.

TNC-2 *In the matter of the Commission, on its own motion, seeking to determine the annual fee for Transportation Network Companies.*

On October 14, 2015, the Commission opened TNC-2 to review the annual fee associated with TNCs. NEB. REV. STAT. § 75-305 requires TNCs to pay an annual fee of either twenty-five thousand dollars (\$25,000) or up to eighty dollars (\$80) per personal vehicle operated by a TNC driver. The annual fees are due to the Commission by January 1 of each year. The Commission must annually review the per-vehicle fee to ensure that the collected amount does not exceed what is necessary for the Commission to administer and enforce the laws, rules and regulations regarding TNCs. On November 18, 2015, a hearing was held at the Commission to determine the appropriate fee amount. On November 23, 2015, the Commission entered an order setting the 2016 per-vehicle fee at eighty dollars (\$80) per personal vehicle.

Rule and Regulation No. 194 *In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 3, Motor Carrier Rules and Regulations, to adopt rules in accordance with Nebraska Legislative Bill 629 [2015] regarding regulation of Transportation Network Companies (TNC).*

The Commission opened this rulemaking docket in conjunction with TNC-1 on June 16, 2015 to formally begin the process of adopting Commission rules and regulations specifically for TNCs, and to release the first set of proposed rules for comment. The Commission received written comments and held a workshop to discuss the proposed rules and gather additional comment. A second set of proposed rules were released on October 20, 2015 and a public hearing was held December 1, 2015. The Commission anticipates formal adoption of the rules in 2016.

## *Enforcement*

The Commission has engaged in enforcement activities since TNCs began to operate in Nebraska prior to the passage of LB 629, and those activities have continued since its passage. During 2015, the Commission received two informal or formal consumer complaints related to TNC operations. However, the Commission has received several tips which have led to

enforcement investigations. These have involved a driver falsely identifying as an Uber driver, an improper rate charge, and reports of TNC drivers either charging cash for trips outside of the TNC operating platform or soliciting for rides without prearranging the ride through the use of the TNC app. The Commission plans to continue monitoring the activities of TNC drivers and investigating consumer reports and tips. The Commission will begin its first quarterly audits in the first calendar quarter of 2016.

The Commission issued only one departmental complaint in 2015:

MCC-3189 *In the Matter of Mark J. Breiner, Director of the Motor Transportation Department, Complainant, v. Lyft, Inc., Defendant.*

LB 629 was passed for the purpose of creating a statutory framework for TNCs to comply with Nebraska law regarding motor transportation. After TNC-1 set forth the application process, Lyft Inc. did not take steps to come into compliance with Nebraska statutes or Commission policies. On July 21, 2015 the Motor Transportation Department opened a formal complaint against Lyft, Inc. for operating in Nebraska without motor carrier authority or a TNC permit from the Commission. The Department and Lyft reached agreement of a stipulated fine to dismiss the complaint, which the Commission approved on October 20, 2015.

### 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 21 taxicab carriers that have received Certificates of Public Convenience and Necessity to operate taxi services in the State of Nebraska. The Commission did not authorize any new taxicab carriers in 2014. The following companies received new authority during 2015:

<b>Carrier</b>	<b>Location</b>
Siouxland Taxi	South Sioux City, NE
EZ Cab	South Sioux City, NE

The following tables respectively show the number of taxicabs operated by taxicab carriers during 2015 relative to 2014; the number of drivers either employed or contracted by taxicab carriers, in 2015 relative to 2014; and the number of rides provided by taxicab carriers in 2015 relative to 2014:

#### **Number of Taxicabs in Operation by Location**

<b>Location</b>	<b>2014</b>	<b>2015</b>	<b>Difference</b>
<b>Statewide</b>	251	246	(6)
<b>Omaha/Lincoln Metro</b>	214	209	(5)
<b>Greater Nebraska</b>	37	37	0

### Taxicab Drivers Employed/Contracted by Location

Location	2014	2015	Difference
Statewide	276	267	(9)
Omaha/Lincoln Metro	217	213	(4)
Greater Nebraska	59	54	(4)

### Rides Provided by Taxicab Carriers by Location

Location	2014	2015	Difference
Statewide	741487	618357	(123130)
Omaha/Lincoln Metro	649340	528550	(120790)
Greater Nebraska	92147	89807	(2340)

The Commission has been monitoring the potential impact of the entry of TNCs to the market, and notes that the impact on taxicab carriers has been felt primarily in the Omaha and Lincoln metro areas. It appears that taxi providers in Omaha and Lincoln have either been able to maintain the number of drivers and cabs that they employ, or have had a decrease in both drivers and vehicles. The Commission has received reports of business being down from between sixteen to thirty percent in Omaha and Lincoln. The TNCs do not appear to have made a significant impact in localities outside of Omaha and Lincoln.

### Recommendations for the 2016 Legislative Session

As NEB. REV. STAT. §§ 75-323 through 75-342 have only been in effect since May 2015, the Commission continues to evaluate what affect the new statutes will have on the industry. However, the Commission has the following issues that the Legislature may consider for the 2016 Legislative Session:

1. The use of an identifier for the TNC Vehicles. State law does not currently require TNC vehicles be identified in any manner. TNC vehicles should be required to have some sort of identifier so that the passenger can more readily identify the vehicle as opposed to a vehicle that may be operating illegally without Commission approval. The identifying piece may be a sign or placard located in the lower passenger side of the vehicle's dashboard or some other non-permanent piece.
2. The Legislature may look at increasing the penalty for operating either illegally or outside of the TNC platform. The Commission has received some information that these operations are occurring. These operations will cause a problem with insurance applicability for the illegal operator or the TNC driver operating outside of the platform.

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